

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—continued

Of Criminal Force and Assault—continued.

1 Section.	2 OFFENCE.	3 Whether the Police may arrest with- out warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bail- able or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
355	Assault or criminal force with intent to dis- honor a person otherwise than on grave and sudden provocation.	Shall not arrest without war- rant.	Summons	Bailable	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the 1st or 2nd class.
356	Assault or criminal force in attempt to com- mit theft of property worn or carried by a person.	May arrest with- out warrant.	Warrant	Not bailable	Ditto	Any Magis- trate.
357	Assault or use of criminal force in attempt wrongfully to confine a person.	Ditto	Ditto	Bailable	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Ditto.
358	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without war- rant.	Summons	Ditto	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.

Of Kidnapping, Forcible Abduction, Slavery, and forced Labour.

1 Section.	2 OFFENCE.	3 May arrest with- out warrant.	4 Warrant	5 Not bailable.	6 Imprisonment of either description for 7 years, and fine.	7 Court of Ses- sion, or Ma- gistrate of the 1st class.
363	Kidnapping					
364	Kidnapping or abducting in order to murder	Ditto	Ditto	Ditto	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Ses- sion.

365	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	Ditto	-	Ditto	-	Ditto	Imprisonment of either description for 7 years, and fine.	Ditto.
366	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, &c.	Ditto	-	Ditto	-	Ditto	Imprisonment of either description for 10 years, and fine.	Ditto.
367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c.	Ditto	-	Ditto	-	Ditto	Ditto	Ditto.
368	Concealing or keeping in confinement a kidnapped person.	Ditto	-	Ditto	-	Ditto	Punishment for kidnapping or abduction.	Ditto.
369	Kidnapping or abducting a child with intent to take property from the person of such child.	Ditto	-	Ditto	-	Ditto	Imprisonment of either description for 7 years, and fine.	Ditto.
370	Buying or disposing of any person as a slave	Shall not arrest without warrant.	-	Ditto	-	Bailable	Ditto	Ditto.
371	Habitual dealing in slaves	May arrest without warrant.	-	Ditto	-	Not bailable	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
372	Selling or letting to hire a minor for the purpose of prostitution.	Ditto	-	Ditto	-	Ditto	Imprisonment of either description for 10 years, and fine.	Court of Session, or Magistrate of the 1st class.
373	Buying or obtaining possession of a minor for the same purpose.	Ditto	-	Ditto	-	Ditto	Ditto	Ditto.
374	Unlawful compulsory labour	Ditto	-	Ditto	-	Bailable	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
376	Rape	Ditto	-	Ditto	-	Not bailable	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—concluded.

Of Unnatural Offences.

1 Section.	2 OFFENCE.	3 Whether the Police may arrest with- out warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bail- able or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
377	Unnatural offences	May arrest without warrant.	Warrant	Not bailable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.

Of Theft.

379	Theft	May arrest without warrant.	Warrant	Not bailable.	Imprisonment of either description for 3 years, or fine, or both.	Any Magistrate.
380	Theft in a building, tent, or vessel	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, and fine.	Ditto.
381	Theft by Clerk or servant of property in possession of master or employer.	Ditto	Ditto	Ditto	Ditto	Court of Session, or Magistrate of the 1st or 2nd class.

382	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, in order to the committing such theft, or to retiring after committing it, or to retaining property taken by it.	Ditto	-	Ditto	-	Ditto	Rigorous imprisonment for 10 years, and fine.	Court of Session.
<i>Of Extortion.</i>								
384	Extortion	-	-	Warrant	-	Bailable	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the 1st or 2nd class.
385	Putting or attempting to put in fear of injury, in order to commit extortion.	Ditto	-	Ditto	-	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
386	Extortion by putting a person in fear of death or grievous hurt.	Ditto	-	Ditto	-	Not bailable.	Imprisonment of either description for 10 years, and fine.	Court of Session.
387	Putting or attempting to put a person in fear of death or grievous hurt, in order to commit extortion.	Ditto	-	Ditto	-	Ditto	Imprisonment of either description for 7 years, and fine.	Ditto.
388	Extortion by threat of accusation of an offence punishable with death, transportation for life, or imprisonment for 10 years.	Ditto	-	Ditto	-	Ditto	Imprisonment of either description for 10 years, and fine.	Ditto.
	If the offence threatened be an unnatural offence	Ditto	-	Ditto	-	Ditto	Transportation for life	Ditto.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—continued.

Of Extortion—continued.

1 Section.	2 OFFENCE.	3 Whether the Police may arrest with- out warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bail- able or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
389	Putting person in fear of accusation of offence punishable with death, transportation for life, or imprisonment for 10 years, in order to commit extortion. If the offence be an unnatural offence	Shall not arrest without warrant. Ditto	Warrant Ditto	Not bailable - Ditto	Imprisonment of either description for 10 years, and fine. Transportation for life -	Court of Ses- sion. Ditto.

Of Robbery and Dacoity.

392	Robbery	May arrest with- out warrant.	Warrant	Not bailable-	Rigorous imprisonment for 10 years, and fine.	Court of Ses- sion, or Ma- gistrate of the 1st class.
	If committed on the highway between sunset and sunrise.	Ditto	Ditto	Ditto	Rigorous imprisonment for 14 years, and fine.	Ditto.
393	Attempt to commit robbery	Ditto	Ditto	Ditto	Rigorous imprisonment for 7 years, and fine.	Ditto.
394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person generally concerned in such robbery.	Ditto	Ditto	Ditto	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Ditto.
395	Dacoity	Ditto	Ditto	Ditto	Ditto -	Court of Ses- sion.

396	Murder in dacoity	-	-	-	Ditto	-	Ditto	-	Death, transportation for life, or rigorous imprisonment for 10 years, and fine.	Ditto.
397	Robbery or dacoity with attempt to cause death or grievous hurt.	-	-	-	Ditto	-	Ditto	-	Rigorous imprisonment for not less than 7 years.	Ditto.
398	Attempt to commit robbery or dacoity when armed with deadly weapon.	-	-	-	Ditto	-	Ditto	-	Ditto	Ditto.
399	Making preparation to commit dacoity	-	-	-	Ditto	-	Ditto	-	Rigorous imprisonment for 10 years, and fine.	Ditto.
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	-	-	-	Ditto	-	Ditto	-	Transportation for life, or as above	Ditto.
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.	-	-	-	Ditto	-	Ditto	-	Rigorous imprisonment for 7 years, and fine.	Ditto.
402	Being one of five or more persons assembled for the purpose of committing dacoity.	-	-	-	Ditto	-	Ditto	-	Ditto	Ditto.

Of Criminal Misappropriation of Property.

403	Dishonest misappropriation of moveable property or converting it to one's own use.	Shall not arrest without warrant.	Warrant	-	Bailable	-	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
404	Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it.	Ditto	Ditto	-	Ditto	-	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magistrate of the 1st or 2nd class.
	If by clerk or person employed by deceased	Ditto	Ditto	-	Ditto	-	Imprisonment of either description for 7 years, and fine.	Ditto.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—continued.

Of Criminal Breach of Trust.

1 Section.	2 OFFENCE.	3 Whether the Police may arrest with- out warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bail- able or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
406	Criminal breach of trust	-	Warrant	Not bailable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Ses- sion, or Ma- gistrate of the 1st or 2nd class.
407	Criminal breach of trust by a carrier, whar- finger, &c.	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years and fine.	Court of Ses- sion, or Ma- gistrate of the 1st class.
408	Criminal breach of trust by a clerk or servant-	Ditto	Ditto	Ditto	Ditto	Court of Ses- sion, or Ma- gistrate of the 1st or 2nd class.
409	Criminal breach of trust by public servant, or by banker, merchant, or agent, &c.	Shall not arrest without war- rant.	Ditto	Ditto	Transportation for life, or imprison- ment of either description for 10 years, and fine.	Court of Ses- sion, or Ma- gistrate of the 1st class.

Of the receiving of Stolen Property.

1 Section.	2 OFFENCE.	3 Whether the Police may arrest with- out warrant.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bail- able or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
411	Dishonestly receiving stolen property, knowing it to be stolen.	May arrest with- out warrant.	Warrant	Not bailable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Ses- sion, or Ma- gistrate of the 1st or 2nd class.
412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.	Ditto	Ditto	Ditto	Transportation for life, or imprison- ment for 10 years, and fine.	Court of Ses- sion.

413	Habitually dealing in stolen property	-	Ditto	-	Ditto	-	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
414	Assisting in concealment or disposal of stolen property knowing it to be stolen	-	Ditto	-	Ditto	-	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the 1st or 2nd class.

Of Cheating.

417	Cheating	-	Shall not arrest without warrant.	-	Warrant	-	Bailable	-	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the 1st or 2nd class.
418	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	-	Ditto	-	Ditto	-	Ditto	-	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the 1st or 2nd class.
419	Cheating by personation	-	Ditto	-	Ditto	-	Ditto	-	Ditto	Ditto.
420	Cheating and thereby dishonestly inducing delivery of property, or the alteration or destruction of a valuable security.	-	Ditto	-	Ditto	-	Ditto	-	Imprisonment of either description for 7 years and fine.	Court of Session, or Magistrate of the 1st class.

Of Fraudulent Deeds and Dispositions of Property.

421	Fraudulent removal or concealment of property, &c., to prevent distribution among creditors.	-	Shall not arrest without warrant.	-	Warrant	-	Bailable	-	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the 1st or 2nd class.
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CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—continued.

Of Fraudulent Deeds and Dispositions of Property—continued.

1 Section.	2 OFFENCE.	3 Whether the Police may arrest with- out warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bail- able or not	6 Punishment under the Indian Penal Code.	7 By what Court triable.
422	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	Shall not arrest without war- rant.	Warrant	Bailable	Imprisonment of either description for two years, or fine, or both.	Magistrate of the 1st or 2nd class.
423	Fraudulent execution of deed of transfer containing a false statement of consi- deration.	Ditto	Ditto	Ditto	Ditto	Ditto.
424	Fraudulent removal or concealment of pro- perty of himself or any other person, or assisting in the doing thereof, or dis- honestly releasing any demand or claim to which he is entitled.	Ditto	Ditto	Ditto	Ditto	Ditto.

Of Mischief.

426	Mischief	Shall not arrest without war- rant.	Summons	Bailable	Imprisonment of either description for 3 months, or fine, or both.	Any Magis- trate.
427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	Ditto	Warrant	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the 1st or 2nd class.
428	Mischief by killing, poisoning, maiming or rendering useless, any animal of the value of 10 rupees or upwards.	Ditto	Ditto	Ditto	Ditto	Ditto.

429	Mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, &c., whatever may be its value, or any other animal of the value of 50 rupees or upwards.	Ditto	-	Ditto	-	Ditto	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, or Magistrate of the 1st or 2nd class.
430	Mischief by causing diminution of supply of water for agricultural purposes, &c.	May arrest without warrant.	-	Ditto	-	Ditto	Ditto	Ditto.
431	Mischief by injury to public road, bridge, river, or navigable channel, and rendering it impassable or less safe for travelling, or conveying property.	Ditto	-	Ditto	-	Ditto	Ditto	Ditto.
432	Mischief by causing inundation or obstruction to public drainage attended with damage.	Ditto	-	Ditto	-	Ditto	Ditto	Dit
433	Mischief by destroying or moving or rendering less useful a light-house or sea-mark, or by exhibiting false lights.	Ditto	-	Ditto	-	Ditto	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
434	Mischief by destroying or moving, &c., a land-mark fixed by public authority.	Shall not arrest without warrant.	-	Ditto	-	Ditto	Imprisonment of either description for 1 year, or fine, or both.	Magte. of the 1st or 2nd class.
435	Mischief by fire or explosive substance with intent to cause damage to amount of 100 rupees or upwards.	May arrest without warrant.	-	Ditto	-	Ditto	Imprisonment of either description for 7 years, and fine.	Court of Session.
436	Mischief by fire or explosive substance with intent to destroy a house, &c.	Ditto	-	Ditto	-	Not bailable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
437	Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden.	Ditto	-	Ditto	-	Ditto	Imprisonment of either description for 10 years, and fine.	Ditto.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—continued.

Of Mischief—continued.

1	2	3	4	5	6	7
Section	OFFENCE.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
438	The mischief described in the last section when committed by fire or any explosive substance.	May arrest without warrant.	Warrant	Not bailable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
439	Running vessel ashore with intent to commit theft, &c.	Ditto	Ditto	Ditto	Imprisonment of either description for 10 years, and fine.	Ditto.
440	Mischief committed after preparation made for causing death or hurt, &c.	Ditto	Ditto	Ditto	Imprisonment of either description for 5 years, and fine.	Ditto.

Of Criminal Trespass.

447	Criminal trespass	May arrest without warrant.	Summons	Bailable	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
448	House-trespass	Ditto	Warrant	Ditto	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Ditto.
449	House-trespass in order to the commission of an offence punishable with death.	Ditto	Ditto	Not bailable.	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
450	House-trespass in order to the commission of an offence punishable with transportation for life.	Ditto	Ditto	Ditto	Imprisonment of either description for 10 years, and fine.	Ditto.

451	House-trespass in order to the commission of an offence punishable with imprisonment. If the offence is theft - - -	Ditto	-	Ditto	-	Bailable	-	Imprisonment of either description for 2 years, and fine.	Any Magistrate.
		Ditto	-	Ditto	-	Not bailable.	-	Imprisonment of either description for 7 years, and fine.	Court of Session, or Magistrate of the 1st or 2nd class.
452	House-trespass, having made preparation for causing hurt, assault, &c.	Ditto	-	Ditto	-	Ditto	-	Ditto	Ditto.
453	Lurking house-trespass or house-breaking	Ditto	-	Ditto	-	Ditto	-	Imprisonment of either description for 2 years, and fine.	Magte. of the 1st or 2nd class.
454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	Ditto	-	Ditto	-	Ditto	-	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magistrate of the 1st or 2nd class.
	If the offence is theft - - -	Ditto	-	Ditto	-	Ditto	-	Imprisonment of either description for 10 years, and fine.	Ditto.
455	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, &c.	Ditto	-	Ditto	-	Ditto	-	Ditto	Court of Session, or Magistrate of the 1st class.
456	Lurking house-trespass or house-breaking by night.	Ditto	-	Ditto	-	Ditto	-	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magistrate of the 1st or 2nd class.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—concluded.
Of Criminal Trespass—continued.

1 Section.	2 OFFENCE.	3 Whether the Police may arrest with- out warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bail- able or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
457	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.	May arrest without war- rant.	Warrant	Not bailable.	Imprisonment of either description for 5 years, and fine.	Court of Ses- sion, or Ma- gistrate of 1st or 2nd class.
	If the offence is theft - - -	Ditto	Ditto	Ditto	Imprisonment of either description for 14 years, and fine.	Ditto.
458	Lurking house-trespass or house-breaking by night after preparation made for causing hurt, &c.	Ditto	Ditto	Ditto	Ditto	Court of Ses- sion, or Ma- gistrate of the 1st class.
459	Grievous hurt caused whilst committing lurk- ing house-trespass or house-breaking.	Ditto	Ditto	Ditto	Transportation for life, or imprison- ment of either description for 10 years, and fine.	Court of Ses- sion.
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, &c.	Ditto	Ditto	Ditto	Ditto	Ditto.
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	Ditto	Ditto	Bailable	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the 1st or 2nd class.
462	Being entrusted with any closed receptacle con- taining or supposed to contain any property, and fraudulently opening the same.	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Ses- sion, or Ma- gistrate of the 1st or 2nd class.

CHAPTER XVIII.—OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.

	Forgery	-	-	-	-	Shall not arrest without warrant.	Warrant	-	Bailable	-	Imprisonment of either description for 2 years, or fine, or both.	Court of Session.
465	Forgery	-	-	-	-	Ditto	Ditto	-	Not bailable.	-	Imprisonment of either description for 7 years, and fine.	Ditto.
466	Forgery of a record of a Court of Justice or of a Register of Births, &c., kept by a public servant.	-	-	-	-	Ditto	Ditto	-	Ditto	-	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
467	Forgery of a valuable security, will, or authority to make or transfer any public security, or to receive any money, &c.	-	-	-	-	May arrest without warrant.	Ditto	-	Ditto	-	Imprisonment of either description for 7 years, and fine.	Ditto.
468	When the valuable security is a promissory note of the Government of India.	-	-	-	-	Shall not arrest without warrant.	Ditto	-	Ditto	-	Imprisonment of either description for 7 years, and fine.	Ditto.
469	Forgery for the purpose of cheating	-	-	-	-	Ditto	Ditto	-	Bailable	-	Imprisonment of either description for 3 years, and fine.	Ditto.
471	Using as genuine a forged document which is known to be forged.	-	-	-	-	May arrest without warrant.	Ditto	-	Not bailable.	-	Punishment for forgery	Ditto.
472	When the forged document is a promissory note of the Government of India.	-	-	-	-	Shall not arrest without warrant.	Ditto	-	Ditto	-	Transportation for life, or imprisonment of either description for 7 years, and fine.	Ditto.
472	Making or counterfeiting a seal plate, &c., with intent to commit a forgery punishable under section 467 of the Indian Penal Code; or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeited.	-	-	-	-	Shall not arrest without warrant.	Ditto	-	Ditto	-	Transportation for life, or imprisonment of either description for 7 years, and fine.	Ditto.

CHAPTER XVIII.—OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS—continued.

1 Section.	2 OFFENCE.	3 Whether the Police may arrest with- out warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bail- able or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
473	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable otherwise than under section 467 of Indian Penal Code, or possessing with like intent any such seal, &c.	Shall not arrest without war- rant.	Warrant	Not bailable.	Imprisonment of either description for 7 years, and fine.	Court of Ses- sion.
474	Having possession of a document, knowing it to be forged, with intent to use it as genuine. If the document is a valuable security or will -	Ditto	Ditto	Ditto	Ditto	Ditto.
475	Counterfeiting a device or mark used for au- thenticating documents described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto	Ditto	Ditto	Transportation for life, or as above - Ditto	Ditto.
476	Counterfeiting a device or mark used for au- thenticating documents other than those des- cribed in section 467 of the Indian Penal Code, or possessing counterfeit marked ma- terial.	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, and fine.	Ditto.
477	Fraudulently destroying or defacing, or at- tempting to destroy or deface, or secreting, a will, &c.	Ditto	Ditto	Ditto	Transportation for life, or imprison- ment of either description for 7 years, and fine.	Ditto.

CHAPTER XVIII.—OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS—continued.

Of Trade and Property-Marks.

		Shall not arrest without war- rant.	Warrant	Bailable	Imprisonment of either description for 1 year, or fine, or both.	Magte. of the 1st or 2nd class.
482	Using a false trade or property-mark with in- tent to deceive or injure any person.					
483	Counterfeiting a trade or property-mark used by another, with intent to cause damage or injury.	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
484	Counterfeiting a property-mark used by a pub- lic servant, or any mark used by him to denote the manufacture, quality, &c., of any property.	Ditto	Summons	Ditto	Imprisonment of either description for 3 years, and fine.	Court of Ses- sion, or Ma- gistrate of the 1st class.
485	Fraudulently making or having possession of any die, plate, or other instrument for counter- feiting any public or private property or trade-mark.	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
486	Knowingly selling goods marked with a coun- terfeit property or trade-mark.	Ditto	Ditto	Ditto	Imprisonment of either description for 1 year, or fine, or both.	Magte. of the 1st or 2nd class.
487	Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it con- tains goods which it does not contain, &c.	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Ses- sion, or Ma- gistrate of the 1st or 2nd class.
488	Making use of any such false mark	Ditto	Ditto	Ditto	Ditto	Ditto.
489	Removing, destroying, or defacing, any proper- ty-mark with intent to cause injury.	Ditto	Ditto	Ditto	Imprisonment of either description for 1 year, or fine, or both.	Magte. of the 1st or 2nd class.

CHAPTER XIX.—OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

1 Section.	2 OFFENCE.	3 Whether the Police may arrest with- out warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bail- able or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
490	Being bound by contract to render personal service during a voyage or journey, or to convey or guard any property or person, and voluntarily omitting to do so.	Shall not arrest without war- rant.	Summons	Bailable	Imprisonment of either description for 1 month, or fine of 100 rupees or both.	Magte. of the 1st or 2nd class.
491	Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind or disease, and voluntarily omitting to do so.	Ditto	Ditto	Ditto	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Ditto.
492	Being bound by a contract to render personal service for a certain period at a distant place to which the employee is conveyed at the expense of the employer, and there voluntarily deserting the service or refusing to perform the duty.	Ditto	Ditto	Ditto	Imprisonment of either description for 1 month, or fine of double the expense incurred, or both.	Ditto.

CHAPTER XX.—OFFENCES RELATING TO MARRIAGE.

1 Section.	2 OFFENCE.	3 Whether the Police may arrest with- out warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bail- able or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him, and to cohabit with him, in that belief.	Shall not arrest without war- rant.	Warrant	Not bailable	Imprisonment of either description for 10 years, and fine.	Court of Ses- sion.

494	Marrying again during the life-time of a husband or wife.	Ditto	-	Ditto	-	Bailable	-	Imprisonment of either description for 7 years, and fine.	Ditto.
495	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	Ditto	-	Ditto	-	Not bailable	-	Imprisonment of either description for 10 years, and fine.	Ditto.
496	A person with fraudulent intention going through the ceremony of being married knowing that he is not thereby lawfully married.	Ditto	-	Ditto	-	Ditto	-	Imprisonment of either description for 7 years, and fine.	Ditto.
497	Adultery	Ditto	-	Ditto	-	Bailable	-	Imprisonment of either description for 5 years, or fine, or both.	Ditto.
498	Enticing or taking away or detaining with a criminal intent a married woman.	Ditto	-	Ditto	-	Ditto	-	Imprisonment of either description for 2 years, or fine, or both.	Magte. of the 1st or 2nd class.

CHAPTER XXI.—OF DEFAMATION.

500	Defamation	Shall not arrest without warrant.	-	Warrant	-	Bailable	-	Simple imprisonment for 2 years, or fine, or both.	Court of Session, or Magistrate of the 1st class.
501	Printing or engraving matter knowing it to be defamatory.	Ditto	-	Ditto	-	Ditto	-	Ditto	Ditto.
502	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	Ditto	-	Ditto	-	Ditto	-	Ditto	Ditto.

CHAPTER XXII.—OF CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

504	Insult intended to provoke a breach of the peace.	Shall not arrest without warrant.	-	Warrant	-	Bailable	-	Imprisonment of either description for 2 years, or fine, or both.	Any Magte.
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CHAPTER XXII.—OF CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE—continued.

1 Section.	2 OFFENCE.	3 Whether the Police may arrest with- out warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bail- able or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
505	False statement, rumours, &c., circulated with intent to cause mutiny or offences against the public peace.	Shall not arrest without war- rant.	Warrant	Not bailable -	Imprisonment of either description for 2 years, or fine, or both.	Magte. of the 1st class.
506	Criminal intimidation -	Ditto -	Ditto -	Bailable -	Ditto -	Magte. of the 1st or 2nd class.
507	If threat be to cause death or grievous hurt, &c.	Ditto -	Ditto -	Ditto -	Imprisonment of either description for 7 years, or fine, or both.	Court of Ses- sion, or Ma- gistrate of the 1st class.
508	Criminal intimidation by anonymous commu- nication or having taken precaution to con- ceal whence the threat comes.	Ditto -	Ditto -	Ditto -	Imprisonment of either description for 2 years, in addition to the pun- ishment under above section.	Ditto.
509	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Ditto -	Ditto -	Ditto -	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the 1st class.
510	Uttering any word or making any gesture in- tended to insult the modesty of a woman.	Ditto -	Ditto -	Ditto -	Simple imprisonment for 1 year, or fine, or both.	Ditto.
510	Appearing in a public place, &c., in a state of intoxication, and causing annoyance to any person.	Ditto -	Ditto -	Ditto -	Simple imprisonment for 24 hours, or fine of 10 rupees, or both.	Any Magis- trate.

CHAPTER XXIII—OF ATTEMPTS TO COMMIT OFFENCES.

511	Attempting to commit offences punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence.	According as the offence is one in respect of which the Police may arrest without warrant or not.	According as the offence is one in respect of which a summons or warrant shall ordinarily issue.	According as the offence contemplated by the offender is bailable or not.	Transportation or imprisonment not exceeding half of the longest term and of the description provided for the offence, or fine, or both.	By the Court by which the offence attempted is triable.
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OFFENCES AGAINST OTHER LAWS.

	If punishable with death, transportation, or imprisonment for seven years or upwards.	May arrest without warrant.	Warrant	Not bailable.		According to the provisions of section eight of this Code.
	If punishable with imprisonment for three years and upwards but less than seven.	Ditto	Ditto	Ditto	.....	
	If punishable with imprisonment for less than three years.	Shall not arrest without warrant.	Summons	Bailable	.....	
	If punishable with fine only	Ditto	Ditto	Ditto	.....	

SCHEDULE V.

Acts of the Governor General of India in Council.

Acts and sections containing reference.	Section or Chapter quoted.	Section or Chapter of this Act to be substituted.
XVIII of 1864, s. 19	61	307
XXI of 1864, s. 2	62	518
	63	519
	303	521
	309	522
	310	523
	311	525
	312	526
	313	527
	314	528
XXII of 1864, ss. 3 & 5	23	37
XIII of 1865, s. 29	Chap. XIII	Chapter XXXIII
s. 35	Sections 336 to 340 (both inclusive).	407, 409, 410, 411, and 412
s. 39	380	287
s. 40	Chap. XXVI	Chapter XXXIV
s. 41	383	301
XIX of 1865, s. 9	23	37
IV of 1866, s. 30	Sections 336 to 340 (both inclusive).	407, 409, 410, 411 and 412
s. 33	380	287
s. 34	Chap. XXVI	Chapter XXXIV
s. 35	385	305
XXIV of 1866, s. 11	Sections 336 to 340 (both inclusive).	407, 409, 410, 411 and 412.
s. 14	380	287
s. 15	Chap. XXVI	Chapter XXXIV
s. 16	385	305
III of 1867, s. 17	61	307
XV of 1867, s. 19	61	307
XXII of 1867, s. 14	61	307
XXIII of 1867, s. 5	Sections 248 to 255 (both inclusive).	149, Chapter XVII and the provisions applicable to warrant cases.
s. 6	334 and 335	405 and 406
I of 1868, s. 5	61	307
VI of 1868, s. 19	308	521
s. 35	and Chap. XX	521 to 529 (both inclusive.)
XIII of 1869, s. 2	61	307
	198	338 and 339
	and 364	334, 335, 337, 338, 339 and 340
XVIII of 1869, s. 18 cl. (b)	Chap. XXII	Chapter XL
XXI of 1869, s. 30	Chap. XIX	Chapter XXXVIII
VIII of 1870, s. 6	61	307
	and 316	536
IX of 1871, sch. II, No. 46	Chap. XXII	Chapter XL

Acts of the Governor of Madras in Council.

Acts and sections containing reference.	Section or Chapter quoted.	Section or Chapter of this Act to be substituted.
III of 1864, s. 23	Chap. VIII	Chapter XXVII and sections 415 to 420 (both inclusive).
X of 1865, s. 116	Chap. XX	Sections 521 to 529 (both inclusive).
I of 1866, ss. 3 and 5	s. 23	37
I of 1867, s. 1	Chap. I	Chapter I.
VIII of 1867, s. 4	ss. 68	142 *
	97	183
	127	377
	128	378
	129	381
	130	410
	131	416
	132	417
	133	109 & 110
	187	117 (first clause).

Acts of the Governor of Madras in Council—(continued.)

Acts and sections containing reference.	Section or Chapter quoted.	Section or Chapter of this Act to be substituted
VIII of 1867, s. 4	152	124
	153	125
	97	183
s. 9	Chap. IV	Sections 139, 140, 141, 147, 142, and Chapter XII.
	Chap. V	Sections 159, 161, 163, 164, 165, 166, 91, 167, 168, 169, 170, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184 and 185.
	Chap. VI	Sections 92, 94, 95, 96, 97, 98, 99, 100, 93, 101, 108 and 480.
	Chap. VII	Section 92, Clause sixth, latter part.
	Chap. VIII	Chapter XXVII and Sections 415 to 420 (both inclusive).
	Chap. IX	Sections 109, 110, 111, 114, 116, 117 first part, 89, 112, 102, 103, 379, 380, 118, 119, 120, 121, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133 and 136.
	With the exception of sections	
	125	385
	147	121
	148	} Re-enacted in Act No. 1 of 1872 (Evidence Act).
	149	
	150	
	154	
	158	126
	160	130
	161	132
	151	133
III of 1871, s. 132	Chap. XX	123
		Sections 521 to 529 (both inclusive).

Acts of the Governor of Bombay in Council.

Acts and sections containing reference.	Section or Chapter quoted.	Section or Chapter of this Act to be substituted.
VI of 1862, s. 18	61	307
III of 1867, ss. 4 and 6	23	37
II of 1868, s. 15	61	307

Acts of the Lieutenant Governor of Bengal in Council.

Acts and sections containing reference.	Section or Chapter quoted.	Section or Chapter of this Act to be substituted.
II of 1863, s. 7	61	307
VI of 1863, s. 238	61	307
III of 1864, s. 6	23	37
s. 80	61	307
VII of 1864, s. 28	Chap. VIII	Chapter XXVII and Sections 415 to 420 (both inclusive.)
IV of 1865, s. 4	Chap. XV	Chapter XVI and the provisions applicable to summons cases.
II of 1866, s. 48	s. 61	307
V of 1866, s. 51	s. 61	307
II of 1867, s. 14	s. 61	307
III of 1867, s. 17	s. 61	307
V of 1867, s. 4	s. 61	307
IV of 1871, s. 19	Chap. XV	Chapter XVI and the provisions applicable to summons cases.

H. S. CUNNINGHAM,

*Offg. Secy. to the Council of the Govr. Genl.
for making Laws and Regulations.*

The following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th March 1872 :—

We, the undersigned, the Members of the Select Committee of the Council of the Governor

Office Memorandum, Home Department, No. 316, dated 16th June 1868, forwarding Circular from Home Department, Nos. 307-316, dated 21st July 1865, with replies.

Endorsement, Home Department, No. 476, dated 21st November 1870, forwarding letter from President and Secretary, Bengal Christian Association, dated 20th October 1870, and enclosure.

Office Memorandum, Foreign Department, No. 686G, dated 8th April 1870, forwarding letter from Governor General's Agent, Rájputána, No. 309G, dated 19th March 1870, and enclosure.

Endorsement, Home Department, No. 5595P, dated 20th December 1871, forwarding letter from President and Sub-Committee of Bengal Christian Association, dated 25th November 1871.

From Reverend James Ross, dated 27th December 1871, forwarding memorial from Ministers of Religion, Calcutta.

.. President, Bengal Christian Association, dated 11th January 1872.

.. Chief Commissioner, Oudh, No. 238, dated 13th January 1872, and enclosures.

From Reverend C. E. Vines, Agra, dated 8th January 1872.

.. H. Stern, Gorakpúr, dated 18th January 1872.

.. Secretary to Chief Commissioner, Central Provinces, No. 310, dated 30th January 1872.

.. Officiating Second Assistant Resident, Haidarábád, No. 3, dated 3rd February 1872.

.. Reverend T. P. Hughes, Pesháwar, dated 2nd February 1872.

.. Secretary to Chief Commissioner, Mysore, No. 344J, dated 9th February 1872, and enclosure.

.. Reverend C. B. Leupolt, Benares, dated 13th February 1872.

.. Secretary to Government, North-Western Provinces, No. 661A, dated 1st March 1872, and enclosures.

.. Secretary to Government, Bengal, No. 749, dated 29th February 1872, and enclosures.

.. C. Sanderson, Esq., dated 8th March 1872.

.. Secretary to Government, Panjáb, No. 785, dated 8th March 1872.

.. Secretary to Govt., N. W. Provinces, No. 896A, dated 18th March 1872.

General of India for the purpose of making Laws and Regulations, to which the Bill to consolidate and amend the law relating to the solemnization in India of marriages of persons professing the Christian Religion was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

2. To remove the ambiguity of the present law as to the circumstances under which a Clergyman of the Church of England is restrained from solemnizing marriages at any place other than a church, we have explained that the restriction applies to any place within five miles distance from a church.

3. Under the existing law, any person wishing to have his or her marriage solemnized by a licensed Minister is required to reside for four days previous to giving notice of the intended marriage at the place where such notice is given. But although the law requires certain forms to be gone through with the object of giving the utmost possible publicity to any notice of an intended marriage, it suffers such marriage to take place immediately after notice has been given, if the parties to the marriage so desire. We think that an interval of four days between notice and marriage will be advantageously substituted for the four days enforced residence previous to notice, and we have amended the Bill accordingly.

4. We think that, with the alteration of procedure just stated, the fourteen days' delay between the notice and the issue of the Minister's certificate required by the present law where one of the parties to the intended marriage is a minor, may, in cases in which the consent of the person authorized to give consent to such marriage has been obtained, be dispensed with. It is proposed that this relaxation of the existing rule should extend only to cases in which the licensed Minister is satisfied that such consent has been given to the intended marriage.

5. Section 52 of the Bill, as introduced, provided that, when no marriage is registered during any month, a certificate to that effect shall be submitted. We think this involves unnecessary labour and propose that the practice of sending such certificates be discontinued.

6. We have altered section 54 of the Bill as introduced by restricting the proviso thereto so as to make the consent of parents or guardians (where there are any) essential to the validity of certificates for the marriage of Native Christians only when either of the parties to the marriage has not completed his or her eighteenth year; we think that the exception to this rule contemplated by the Bill as originally drawn would have been liable to abuse.

7. We have provided that the ordinary rules of procedure in regard to the registration of marriages shall not be applicable to marriages between Natives of this country. For the record of such marriages, it is proposed to keep distinct registers, and to subject the persons keeping the same to less onerous obligations in the matter of making returns. Some doubt has been experienced as to the intention of the provisions of the existing law on this subject, and it is thought desirable to draw a clear distinction between marriages the record of which is required for statistical purposes in England, and those in regard to which there is no such need.

8. The alteration of the law as regards the interval between notice and issue of certificate of marriage has been applied, in the amended Bill, also to marriages by Registrars, the extent of such interval being made the same in both cases. In the case of minors, no modification of the rule as to delay seems called for, as the law provides a means whereby the persons intending marriage may obtain the issue of certificate without waiting for the expiration of the fourteen days after notice has been given.

9. We have introduced into the amended Bill provisions against the practice of polygamy, under cover of a professed change of religious belief, by persons who have contracted a marriage of the kind provided for by this Bill.

10. We have made other verbal alterations and recommend that the Bill as amended by us be passed; but as some of the alterations of the existing law to be effected by this Bill are of an important character, we think that it should be republished for general information before this report is taken into consideration.

F. R. COCKERELL.
J. F. STEPHEN.
J. F. D. INGLIS.

W. ROBINSON.
F. S. CHAPMAN.
J. R. BULLEN SMITH.

The 19th March 1872.

THE INDIAN CHRISTIAN MARRIAGE BILL, 1872.

ARRANGEMENT OF SECTIONS.

Preamble.

PRELIMINARY.

SECTIONS.

1. Short title.
Extent.
Commencement.
2. Enactments repealed.
3. Interpretation-clause.

PART I.

THE PERSONS BY WHOM MARRIAGE MAY BE SOLEMNIZED.

4. Marriage to be solemnized according to Act.
5. Persons by whom marriage may be solemnized.
6. Licenses to solemnize marriage by whom to be granted.
7. Appointment of Marriage Registrars.
Appointment of Senior Marriage Registrar.
When Magistrate to be Marriage Registrar.
8. Appointment of Marriage Registrar in allied Native States.
9. Licensing of persons to grant certificates of marriage between Native Christians.

PART II.

TIME AND PLACE AT WHICH MARRIAGE MAY BE SOLEMNIZED.

10. Time for solemnizing marriage.
Exceptions.
11. Place for solemnizing marriage.
Fee for special license.

PART III.

MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION LICENSED UNDER THE ACT.

12. Notice of intended marriage.
13. Publication of such notice.
Return or transfer of notice.
14. Notice of intended marriage in private dwelling.
15. Transmission of copy of notice to Marriage Registrar when one of the persons is a minor.
16. Procedure on receipt of notice.
17. Certificate of notice given and declaration made to be issued.
Proviso.
18. Declaration to be made before issue of certificate.
19. Consent of parent or guardian necessary.
20. Power to prohibit by notice issue of certificate.
21. Procedure of Minister on receipt of such notice.
22. In case of minority, certificate not to issue until fourteen days after receipt of notice.

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23. Proceedings before issue of certificate to Native Christians.
24. Form of certificate.
25. After issue of certificate, marriage may be solemnized.
26. Certificate void if marriage not solemnized within two months.

PART IV.

REGISTRATION OF MARRIAGES.

27. Marriages, with certain exceptions, to be registered as herein prescribed.
28. Registration of marriages solemnized by Clergymen of the Church of England.
29. Quarterly returns to Archdeaconry.
Contents of returns.
30. Registration and returns of marriages solemnized by Clergymen of the Church of Rome.
31. Registration and returns of marriages solemnized by Clergymen of the Church of Scotland.
32. What marriages to be entered in register book and certificate prescribed in schedule IV.
33. Such entries to be signed and attested.
34. Certificate to be forwarded to Marriage Registrar, copied and transmitted to Government.
35. Copies of certificates to be entered and numbered.
36. Registrar to add number of entry to certificate, and send to Government.
37. Registration of marriages between Native Christians and custody and disposal of register book.

PART V.

MARRIAGES SOLEMNIZED BY, OR IN THE PRESENCE OF, A MARRIAGE REGISTRAR.

38. Notice of intended marriage before Marriage Registrar.
39. Notice how to be published in ordinary cases, and how in the case of minors.
40. Notice to be filed and copy entered in Marriage Notice Book.
41. Certificate of notice given and declaration made to be issued on request.
If no impediment shown or issue not forbidden.
After what interval certificate to issue.
42. Oath or declaration to be made before issue of certificate.
43. When parties may petition High Court to order certificate in less than fourteen days.
Order on petition.
44. Provision as to consent of parent or guardian to apply and issue of certificate may be forbidden.
Effect of protest.
45. Where person whose consent is necessary is insane, or unjustly withholds consent, parties may petition.
Procedure on petition.
46. When Marriage Registrar refuses certificate, party may petition.
Procedure on petition.

SECTIONS.

47. When Registrar in allied Native State refuses certificate, petition may be made to Governor General in Council.
48. If Registrar doubt authority of person forbidding, he may petition High Court or District Judge.
Contents of, and procedure on, petition.
Marriage Registrar in allied State, not satisfied of want of authority in person forbidding, may refer to Governor General.
Procedure on reference.
49. Liability of person protesting on frivolous grounds against issue of certificate.
50. Form of certificate.
51. After issue of certificate, marriage may be solemnized in presence of Marriage Registrar and two witnesses.
52. When marriage is not had within three months after notice, a new notice required.
53. Marriage Registrar may ask for particulars to be registered.
54. Registry of marriages.
55. Certificates to be transmitted monthly to Secretary to Government.
Custody and transmission of register-book.
56. Registrars in allied Native States to transmit certificates to Foreign Secretary.
57. In case of a Native Christian, Registrar to ascertain that notice and certificate are understood.
58. Native Christians to be made to understand declarations at marriage.
59. Registration of marriages between Native Christians.

PART VI.

MARRIAGE OF NATIVE CHRISTIANS.

60. On what conditions marriages of Native Christians may be certified.
61. On marriage (the conditions having been fulfilled) licensed person to grant certificate.
62. Register-book to be kept.
63. Search in Register-book to be allowed and copy of entry given.
64. Part VI not to apply to Roman Catholics. Saving of certain marriages.

PART VII.

PENALTIES.

65. Punishments—
for false oath, declaration, notice, or certificate for procuring marriage;
66. for forbidding, by false personation, issue of certificate by Marriage Registrar;
67. for solemnizing marriage without due authority;
68. for solemnizing marriage out of proper time, or without witnesses;
excepting marriages solemnized under special licenses;

SECTIONS.

69. for solemnizing, without notice or within fourteen days after notice, marriage with minor.
70. for issuing certificate, or marrying, without publication of notice;
marrying after expiry of certificate;
solemnizing marriage with minor within fourteen days, without authority of Court, or without sending copy of notice;
issuing certificate against authorized prohibition.
71. for issuing certificate after expiry of notice, or, in case of minor, within fourteen days after notice, or against authorized forbiddal;
72. for unauthorizedly marrying according to usage of—
the Church of England;
or Church of Scotland;
or Church of Rome;
for issuing certificate or marrying without publishing notice,
or after expiry of certificate;
for issuing certificate for, or solemnizing marriage with minor, within fourteen days after notice;
for issuing certificate authorizedly forbidden;
for solemnizing marriage authorizedly forbidden;
73. for unlicensed person granting certificate pretending to be licensed;
74. for destroying or falsifying Register-books.
75. Limitation of prosecutions.

PART VIII.

MISCELLANEOUS.

76. Bar of right, by change of religion, to practise polygamy.
77. Punishment for marrying again during continuance of marriage under law forbidding polygamy.
78. What matters need not be proved in respect of marriage in accordance with Act.
79. Corrections of errors.
80. Searches to be allowed and copies of entries given on payment of fee.
81. Certified copy of entry in marriage register, &c., to be evidence of marriage without further proof.
82. Transmission of certificates of certain marriages to Secretary of State for India.
83. Local Government to prescribe fees.
84. Power to make rules.

SCHEDULE I.—Notice of marriage.

SCHEDULE II.—Certificate of receipt of notice.

SCHEDULE III.—Form of Register of Marriages.

SCHEDULE IV.—Marriage Register Book. Certificate of Marriage.

SCHEDULE V.—Enactments repealed.

A Bill to consolidate and amend the law relating to the solemnization in India of marriages of persons professing the Christian Religion.

WHEREAS it is expedient to consolidate and amend the law relating to the solemnization in India of marriages of persons professing the Christian Religion; It is enacted as follows:—

PRELIMINARY.

Short title. 1. This Act may be called "The Indian Christian Marriage Act, 1872."

Extent. It extends to the whole of British India, and, so far only as regards Christian British subjects of Her Majesty, to the territories of any Native Prince or State in alliance with Her Majesty;

Commencement. and it shall come into operation on the passing thereof.

2. The enactments specified in the fifth schedule hereunto annexed are repealed.

3. In this Act, unless there is something repugnant in the subject or context,—

"Church of England" and "Anglican" mean and apply to the Church of England as by the law established;

"Church of Scotland" means the Church of Scotland as by law established;

"Church of Rome" and "Roman Catholic" mean and apply to the Church which regards the Pope of Rome as its spiritual head;

"Church" includes any chapel or other building generally used for public Christian worship;

"Minor" means a person who has not completed the age of twenty-one years;

"Native Christian" includes the Christian descendants of Natives of India converted to Christianity, as well as such converts.

"Native Christian."

PART I.

THE PERSONS BY WHOM MARRIAGE MAY BE SOLEMNIZED.

4. Every marriage between persons, one or both of whom professes or profess the Christian Religion, shall be solemnized in accordance with the provisions of the next following section; and any such marriage solemnized otherwise than in accordance with such provisions, shall be void.

Persons by whom marriage may be solemnized. 5. Marriages may be solemnized in India—

(1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies, and customs of the church of which he is a Minister;

(2) by any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies, and customs of the Church of Scotland;

(3) by any Minister of Religion who, under the provisions of this Act, or any Act hereby repealed, has obtained a license to solemnize marriages;

(4) by, or in the presence of, a Marriage Registrar appointed under this Act or any Act hereby repealed;

(5) by any person who, with respect to marriages between Native Christians, shall have received a license to grant certificates of marriage.

6. The Governor General of India in Council, the Governors of Madras and Bombay in Council, and the Lieutenant-Governors of Bengal, the North-Western Provinces and the Panjáb, may grant licenses to Ministers of Religion to solemnize marriages within the territories under the immediate administration of such Governor General, or subject to such Governors and Lieutenant-Governors respectively, and may revoke such licenses.

7. The Local Government may appoint one or more Marriage Registrars, either by name or as holding any office for the time being, for any portion of the Presidency or territory subject to its administration. But no person shall be a Marriage Registrar who does not profess the Christian Religion.

Where there are more than one Marriage Registrar in any district, the Local Government shall appoint one of them to be the Senior Marriage Registrar.

When there is only one Marriage Registrar in a district, and such Registrar is absent from such district, or ill, or in case of the death of the only Marriage Registrar in a district, or of any temporary vacancy in such office, the Magistrate of such district shall act as, and be, Marriage Registrar thereof during such absence, illness, or temporary vacancy as aforesaid.

8. The Governor General of India in Council may appoint any person being a Christian, to be a Marriage Registrar in any district to be assigned by the Governor General of India in Council, in any place within the territories of any Native Prince or State in alliance with Her Majesty.

9. The Local Government may issue a license to any person, being a Christian, either by name or as holding any office for the time being, authorizing him to grant certificates of marriage between Native Christians. Any such license may be revoked by the Local Government by whom it was granted, and every such grant or revocation shall be notified in the official Gazette.

PART II.

TIME AND PLACE AT WHICH MARRIAGE MAY BE SOLEMNIZED.

10. Every marriage hereafter solemnized in India by any person who has received episcopal ordination, or by any Clergyman of the Church of Scotland, or by any Minister licensed under this Act to solemnize marriages, shall be solemnized between the hours of six in the morning and seven in the evening:

Provided that nothing in this section shall apply to—

(1).—A Clergyman of the Church of England solemnizing a marriage under a special license permitting him to do so at any hour other than between six in the morning and seven in the evening under the hand and seal of the Anglican Bishop of the Diocese or his Commissary.

(2).—A Clergyman of the Church of Rome solemnizing a marriage between the hours of seven in the evening and six in the morning, when he has received a general or special license in that behalf from the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is so solemnized; or from such person as the same Bishop has authorized to grant such license.

11. No Clergyman of the Church of England shall solemnize a marriage in any building or place other than a church, where there is a church within five miles distance from such building or place, unless he has received a special license authorizing him to do so under the hand and seal of the Bishop of the Diocese or from the Commissary of such Bishop.

For such special license, the Registrar of the Diocese shall be entitled to charge such additional fee as the said Bishop may sanction.

PART III.

MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION LICENSED UNDER THE ACT.

12. In all cases in which a marriage is intended to be solemnized by a Minister of Religion who has obtained a license to solemnize marriages under this Act, or any Act hereby repealed,—

one of the persons intending marriage shall give notice in writing, according to the form contained in the first schedule hereto annexed, or to the like effect, to the Minister of Religion whom he or she desires to solemnize the marriage and shall state therein the name or names, and, the profession or condition, of each of the persons intending marriage, the dwelling place of each of them, and the time during which each has dwelt there, and the church or private dwelling in which the marriage is to be solemnized:

Provided that, if either of such persons shall have dwelt in the place stated in the notice during more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

13. If the Minister of Religion to whom such notice has been delivered be entitled to officiate in the church in which it is intended to solemnize the said marriage, he shall publish

every notice of marriage received by him, by causing the same to be published and affixed in some conspicuous part of such church.

If such Minister of Religion is not entitled to officiate as a Minister in such church, he shall, at his option, either return the notice to the person delivering the same to him, or deliver it to some other Minister entitled to officiate therein, who shall thereupon cause the notice to be so published and affixed as aforesaid.

14. If it be intended that the marriage shall be solemnized in a private dwelling, the Minister of Religion, on receiving the notice prescribed in section twelve, shall forward it to the Marriage Registrar of the district, who shall affix the same to some conspicuous place in his own office.

15. When one of the persons intending marriage (not being a widow or widower) is a minor, every such Minister as aforesaid, who receives such notice, shall, unless within twenty-four hours after his receipt thereof he returns the same to the person from whom it was received under the provisions of section thirteen, send by the post or otherwise, a copy of such notice to the Marriage Registrar of the district, or, if there be more than one Registrar of such district, to the Senior Marriage Registrar.

16. The Marriage Registrar or Senior Marriage Registrar, on receiving any such notice, shall affix the same to some conspicuous place in his own office, and the latter shall further cause a copy of the said notice to be sent to each of the other Marriage Registrars in the same district, who shall likewise publish the same in the manner above directed.

17. Any Minister of Religion consenting or intending to solemnize any such marriage as aforesaid, shall, on being required so to do by or on behalf of the person by whom the notice was given, and upon one of the persons intending marriage making such declaration as is hereinafter required, issue under his hand a certificate of such notice having been given and of such declaration having been made:

Provided that—

(1) no such certificate shall be issued until the expiration of four days after the date of the receipt of the notice by such Minister;

(2) no lawful impediment, according to the law of England, be shown to his satisfaction why such certificate should not issue, and

(3) the issue of such certificate shall not have been sooner forbidden in the manner hereinafter mentioned by any person authorized in that behalf.

18. The certificate mentioned in section seventeen shall not be issued until one of the persons intending marriage shall have appeared personally before the Minister and

made a solemn declaration that he or she believes that there is not any impediment of kindred or affinity or other lawful hindrance to the said marriage, and, when either or both of the parties, not being a widower or widow, is or are a minor or minors, that the consent of the person or persons whose consent to such marriage is required by law has been obtained thereto, or that there is or are no person or persons resident in India having authority to give such consent, as the case may be.

19. The father, if living, of any minor, not being a widower or widow, or, if the father be dead, the guardian of the person of such minor, and, in case there be no such guardian, then the mother of such minor, may give consent to the minor's marriage, and such consent is hereby required for the same marriage, unless no person authorized to give such consent be resident in India.

20. Every person whose consent to a marriage is required under section nineteen, is hereby authorized to prohibit the grant of the certificate by any Minister, at any time before the issue of the same, by notice in writing to such Minister, subscribed by the person so authorized with his or her name and place of abode and position with respect to either of the persons intending marriage, by reason of which he or she is so authorized as aforesaid.

21. If any such notice prohibiting the marriage be received by such Minister as aforesaid, he shall not issue his certificate and shall not solemnize the said marriage until he has examined into the matter of the said prohibition, and is satisfied that the person prohibiting the marriage has no lawful authority for such prohibition, or until the said notice is withdrawn by the person who gave it.

22. When either of the persons intending marriage is a minor and the Minister is not satisfied that the consent of the person whose consent to such marriage is required by section nineteen has been obtained, such Minister shall not grant such certificate until the expiration of fourteen days after the receipt by him of such notice of marriage.

23. When any Native Christian about to be married takes a notice of marriage to a Minister of Religion, or applies for a certificate from such Minister under section seventeen, such Minister shall, before issuing such certificate, ascertain whether such Native Christian is cognizant of the purport and effect of the said notice or certificate, as the case may be, and, if not, shall translate or cause to be translated such notice or certificate to such Native Christian into his language, or into some language which he understands.

24. The certificate to be issued by such Minister as aforesaid shall be in the form contained in the second schedule hereto annexed, or to the like effect.

25. After the issue of the certificate by such Minister of Religion, marriage may be solemnized between the persons therein described according to such form or ceremony as the Minister thinks fit to adopt: Provided that the marriage be solemnized in the presence of at least two witnesses.

26. Whenever a marriage is not solemnized within two months after the date of the certificate which has been issued by such Minister as aforesaid, such certificate and all other proceedings thereon shall be void, and no person shall proceed to solemnize the said marriage until new notice has been given and a certificate thereof issued in the manner aforesaid.

PART IV.

REGISTRATION OF MARRIAGES.

27. All marriages hereafter solemnized in India between persons one or both of whom professes or profess the Christian Religion, except marriages solemnized under Parts V and VI of this Act, shall be registered in the manner hereinafter prescribed: Provided that no omission or defect in such registration shall invalidate any marriage not otherwise invalid.

28. Every marriage solemnized by a Clergyman of the Church of England shall be registered by the Clergyman solemnizing the same in a register of marriages to be kept by him according to the form contained in the third schedule hereto annexed.

29. Every Clergyman of the Church of England shall send four times in every year returns in duplicate, authenticated by his signature, of the entries in the register of marriages solemnized at or in any station or district at which he has any spiritual charge, to the Registrar of the Archdeaconry to which he is subject, or within the limits of which such station or district is situated.

Such quarterly returns shall contain all the entries of marriages contained in the said register from the first day of January to the thirty-first day of March, from the first day of April to the thirtieth day of June, from the first day of July to the thirtieth day of September, and from the first day of October to the thirty-first day of December, of each year respectively, and shall be transmitted by such Clergyman within two weeks from the expiration of each of the quarters above specified. The said Registrar upon receiving the same shall transmit one copy to the Secretary to the Local Government.

30. Every marriage solemnized by a Clergyman of the Church of Rome shall be registered by the person and according to the form directed in that behalf by the Roman Catholic Bishop of the Diocese or

Vicariate in which such marriage is solemnized, and such person shall forward quarterly to the Secretary to the Local Government returns of the entries of all marriages registered by him during the three months next preceding.

31. Every marriage solemnized by a Clergyman of the Church of Scotland shall be registered by the Clergyman solemnizing the same in a register of marriages to be kept by him for the station or district in which the marriage is solemnized in the form prescribed in section twenty-eight for marriages solemnized by Clergymen of the Church of England, and such Clergyman shall forward quarterly to the Secretary to the Local Government, through the Senior Chaplain of the Church of Scotland, returns similar to those prescribed in section twenty-nine for Clergymen of the Church of England, of all marriages solemnized by him.

32. Every marriage solemnized by any person authorized to solemnize marriages under clauses (1) and (3) of section five, other than the persons mentioned in sections twenty-eight and thirty, shall immediately, after the solemnization thereof, be registered in duplicate by the person solemnizing the same in a marriage register book to be kept by him for that purpose, according to the form contained in the fourth schedule hereto annexed, and also in a certificate attached to the marriage register book as a counterfoil.

33. The entry of such marriage in both the certificate and marriage register book shall be signed by the person by whom the said marriage has been solemnized, and also by the persons married, and shall be attested by two credible witnesses who were present at the solemnization of the marriage, and every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage register book.

34. The person solemnizing the said marriage shall forthwith separate the certificate from the marriage register book and send it within one month from the time of the solemnization of such marriage to the Marriage Registrar of the district in which the marriage was solemnized, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar, who shall cause such certificate to be copied into a book to be kept by him for that purpose, and shall send all the certificates which he has received during the month, with such number and signature or initials added thereto as are hereinafter required, to the Secretary to the Local Government:

35. Such copies shall be entered in order from the beginning to the end of the said book, and shall bear both the number of the certificate as copied, and also a number to be entered by the Marriage

Registrar, indicating the number of the entry of the said copy in the said book, according to the order in which each certificate was received by the said Marriage Registrar.

36. The Marriage Registrar shall also add such last-mentioned number of the entry of the copy in the book to the certificate, with his signature or initials, and shall, at the end of every month, transmit the same to the Secretary to the Local Government.

37. When any marriage between Native Christians is solemnized under Part I or III of this Act, the person solemnizing the same shall, instead of proceeding in the manner provided by sections twenty-eight to thirty-six, both inclusive, register such marriages in a separate register book, and shall keep safely the said register book until the same shall be filled, or, if he shall leave the district in which he solemnized the marriage before the said book is filled, shall make over the same to the person succeeding to his duties in the said district, who shall keep safely the same, and shall make therein the entries by this Act required to be made in respect of any such marriage solemnized by him within the said district.

And the person having the control of the book at the time when it shall be filled, shall send the same to the Marriage Registrar of the district, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar, who shall send it to the Secretary to the Local Government to be kept by him with the records of his office.

The provisions of sections sixty-two and sixty-three as to the form of the Register book, the deposit of extracts therefrom, and the granting searches and copies of the contents of such register, shall apply to the Register books kept under this section.

PART V.

MARRIAGES SOLEMNIZED BY, OR IN THE PRESENCE OF, A MARRIAGE REGISTRAR.

38. When a marriage is intended to be solemnized by, or in the presence of, a Marriage Registrar, one of the parties to such marriage shall give notice in writing, in the form contained in the first schedule hereto annexed, or to the like effect, to any Marriage Registrar of the district within which the parties shall have dwelt, or, if the parties dwell in different districts, shall give the like notice to a Marriage Registrar of each district, and shall state therein the names and surname, and the profession or condition of each of the parties intending marriage, the dwelling place of each of them, and the time, during which each has dwelt therein, and the place in which the marriage is to be solemnized:

Provided that, if either party has dwelt in the place stated in the notice during more than one month, it may be stated therein that he or she hath dwelt there one month and upwards.

and the said Court or any Judge thereof or the said Judge of the district may examine the allegations of the petition in a summary way.

If upon examination such marriage appears proper, such High Court or any Judge thereof or such Judge of the district shall declare the marriage to be a proper marriage, and such declaration shall be as good and effectual as if the person whose consent was needed had consented to the marriage; and if such person has forbidden the issue of the Marriage Registrar's certificate, such certificate shall be issued and the like proceedings may be had under this Part in relation to the marriage as if the issue of such certificate had not been forbidden by such person.

46. Whenever a Marriage Registrar has refused to issue a certificate under this Part, either of the parties intending marriage may apply by petition, where the district of such Registrar is within any of the towns of Calcutta, Madras and Bombay to the High Court, or if such district is not within any of the said towns, then to the Judge of the said district; and the said Court or any Judge thereof or the Judge of the district may examine the allegations of the petition in a summary way, and shall decide thereon. The decision of such Court or any Judge thereof, or of the District Judge shall be final, and the Marriage Registrar to whom the application for the issue of a certificate was originally made shall proceed in accordance therewith.

47. Whenever a Marriage Registrar resident in the territories of any Native Prince or State in alliance with Her Majesty, refuses to issue his certificate, either of the parties intending marriage may apply by petition to the Governor General of India in Council, who shall decide thereon; such decision shall be final, and the Marriage Registrar to whom the application was originally made shall proceed in accordance therewith.

48. Whenever a Marriage Registrar, acting under the provisions of section forty-four, is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do, the said Marriage Registrar shall apply by petition, where the district of such Registrar is within any of the towns of Calcutta, Madras and Bombay, to the High Court of Judicature in the Presidency or place within which such district is comprised, or, if such district be not within any of the said towns, then to the Judge of the district within which the same is comprised.

The said petition shall state all the circumstances of the case, and pray for the order and direction of the Court concerning the same, and the said High Court, or any Judge thereof, or such Judge of the district, shall examine into the allegations of the petition and the circumstances of the case, and if, upon such examination, it shall appear that the person forbidding the issue of such certificate is not authorized by law so to do, such

High Court or any Judge thereof, or such Judge of the district, shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid, and then, and in such case, such certificate shall be issued, and the like proceedings may be had in relation to such marriage as if the issue of such certificate had not been forbidden by such person.

In all cases where a Marriage Registrar appointed under section eight, to act within the territories of any Native Prince or State in alliance with Her Majesty, is not satisfied

that the person forbidding the issue of the certificate is authorized by law so to do, the said Marriage Registrar shall transmit a statement of all the circumstances of the case, together with all documents and papers relating thereto, to the Governor General of India in Council; and, if it appears to the Governor

General of India in Council that the person forbidding the issue of such certificate is not authorized by law so to do, the Governor General of India in Council shall declare that the party forbidding the issue of such certificate is not authorized as aforesaid, and then, and in such case, such certificate shall be issued, and the like proceedings may be had in relation to such marriage as if the issue of such certificate had not been forbidden by such person.

49. Every person entering a protest with the Marriage Registrar, under this Part against the issue of any certificate on grounds which such Marriage Registrar, under section forty-four, or the High Court or Judge thereof, or the District Judge, under section forty-five or forty-six, declares to be frivolous and such as ought not to obstruct the issue of the certificate, shall be liable for the costs of all proceedings in relation thereto and for damages to be recovered by suit by the person against whose marriage such protest was entered.

50. The certificate to be issued by the Marriage Registrar under the provisions of section forty-one shall be in the form contained in the second schedule to this Act annexed, or to the like effect, and the Local Government shall furnish to every Marriage Registrar a sufficient number of forms of certificate.

51. After the issue of the certificate of the Marriage Registrar, or where notice is required to be given under this Act to the Marriage Registrars for different districts, after the issue of the certificates of the Marriage Registrars for such districts, marriage may, if there be no lawful impediment to the marriage of the parties described in such certificate or certificates, be solemnized between such parties, according to such form and ceremony as they think fit to adopt. But every such marriage shall be solemnized between the hours of six in the morning and seven in the evening, in the presence of some Marriage Registrar (to whom shall be delivered such certificate or certificates as aforesaid), and of two or more witnesses,

and in some part of the ceremony each of the parties shall declare as follows or to the like effect—

"I do solemnly declare that I know not of any lawful impediment why I, *A. B.*, may not be joined in matrimony to *C. D.*"

And each of the parties shall say to the other as follows or to the like effect—"I call upon these persons here present to witness that I, *A. B.*, do take thee, *C. D.*, to be my lawful wedded wife [*or husband*]."

52. Whenever a marriage is not had within

When marriage is not had within three months after notice, a new notice required.

three months after the notice has been entered by the Marriage Registrar, as required by section thirty-nine, the notice and the certificate, if any, issued thereupon, and all other proceedings thereupon, shall be utterly void; and no person shall proceed to solemnize the marriage, nor shall any Marriage Registrar enter the same, until new notice has been given, and entry made, and certificate thereof given, at the time and in the manner aforesaid.

53. A Marriage Registrar before whom any

Marriage Registrar may ask for particulars to be registered. marriage is solemnized under this Part may ask of the persons to be married the several particulars required to be registered touching such marriage.

54. After the solemnization of any marriage

Registry of marriages. under this Part, the Marriage Registrar present at the solemnization thereof shall forthwith register such marriage in duplicate, that is to say, in a Marriage Register Book, according to the form of the fourth schedule hereto annexed, and also in a certificate attached to the Marriage Register Book as a counter-foil; and the entry of such marriage in both the certificate and the Marriage Register Book shall be signed by the person by or before whom the marriage has been solemnized, if there be any such person, and by the Marriage Registrar present at such marriage, whether or not the marriage is solemnized by him, and also by the parties married, and attested by two witnesses.

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the Marriage Register Book.

55. The Marriage Registrar shall forthwith

Certificates to be transmitted monthly to Secretary to Government. separate the certificate from the Marriage Register Book and transmit it, at the end of every month, to the Secretary to the Local Government.

The Marriage Registrar shall keep safely the said Register Book until it be filled, and shall then transmit the same to the Secretary to the Government, or to such other officer as aforesaid, to be kept by him with the records of his office.

56. The Marriage Registrars in the territories

Registrars in allied Native States to transmit certificates to Foreign Secretary. of any Native Prince or State in alliance with Her Majesty, shall transmit the certificates mentioned in section fifty-seven to the Secretary for the Foreign Department of the Government of India.

57. When any Native Christian about to be

In case of a Native Christian, Registrar to ascertain that notice and certificate are understood. married applies for or tenders a notice of marriage, or applies for a certificate from a Marriage Registrar, such Marriage Registrar shall

ascertain whether the said Native Christian understands the English language, and, if he does not, the said Marriage Registrar shall translate such notice or certificate, or both of them, as the case may be, or shall cause the same to be translated to such Native Christian in the language of such Native Christian, or the said Marriage Registrar shall otherwise ascertain whether such Native Christian is cognizant of the purport and effect of the said notice and certificate.

58. When any Native Christian is married

Native Christians to be made to understand declarations at marriage. under the provisions of this Part, the party solemnizing the said marriage shall ascertain whether such Na-

tive Christian understands the English language, and, if he does not, the party solemnizing the said marriage shall, at the time of the solemnization thereof, translate, or cause to be translated, to such Native Christian, in the language of such Native Christian, the declarations made at such marriage in accordance with the provisions of this Act.

59. The registration of marriages between

Registration of marriages between Native Christians. Native Christians under this Part shall be conducted in conformity to the rules laid down in section thirty-seven (so far as they are applicable), and not otherwise.

PART VI.

MARRIAGE OF NATIVE CHRISTIANS.

60. Every marriage between Native Christians

On what conditions marriages of Native Christians may be certified. applying for a certificate, shall, without the preliminary notice required under Part III, be certified under

this Part, if the following conditions be fulfilled, and not otherwise:—

(1.) The age of the man intending to be married shall exceed sixteen years, and the age of the woman intending to be married shall exceed thirteen years:

(2.) The man and the woman shall not stand to each other within the prohibited degrees of consanguinity or affinity:

(3.) Neither of the persons intending to be married shall have a wife or husband still living:

(4.) In the presence of the person licensed under section nine, and of at least two credible witnesses, each of the parties shall say to the other—

"I call upon these persons here present to witness that I, *A. B.*, in the presence of Almighty God, and in the name of our Lord Jesus Christ,

do take thee, C. D., to be my lawful wedded wife [or husband],” or words to the like effect:

(5.) Such declaration shall be made between the hours of six in the morning and seven in the evening:

Provided that no marriage shall be certified under this Part when either of the parties intending to be married has not completed his or her eighteenth year, unless such consent as is mentioned in section nineteen has been given to the intended marriage, or unless it appears that there is no person living authorized to give such consent.

61. When, in respect to any marriage falling

On marriage (the conditions having been fulfilled) licensed person to grant certificate.

under this Part, the conditions prescribed in section sixty have been fulfilled, the person licensed as aforesaid, in whose presence the said declaration shall have been made, shall, on the application of either of the parties to such marriage, and on the payment of a fee of four annas, grant a certificate of such marriage. Such certificate shall be signed by such licensed person, and shall be received in any suit touching the validity of such marriage as conclusive evidence of the same marriage having been performed.

62. A Register Book of all marriages of which

Register Book to be kept.

certificates are granted under section sixty-one, shall be kept by the person granting such certificates in his own vernacular language. Such Register Book shall be kept according to such form as the Local Government from time to time prescribes, and the said book or true extracts therefrom, duly authenticated, shall be deposited at such places and at such times as the Local Government directs.

63. Every person licensed under this Act to

Search in Register Book to be allowed and copy of entry given.

grant certificates of marriage and keeping a Marriage Register Book under section sixty-two, shall, at all reasonable times, allow search to be made in such book, and shall, on payment of the fees prescribed by the Local Government under section eighty-three give a copy, certified under his hand, of any entry or entries in the same.

64. This Part of this Act, except so much of

Part VI not to apply to Roman Catholics. Saving of certain marriages.

sections sixty-two and sixty-three as are referred to in section thirty-seven, shall not apply to marriages between Roman Catholics. But nothing herein contained shall be construed to invalidate any marriage contracted between Roman Catholics under the provisions of Part V of Act No. XXV of 1864, previous to the repeal of that Act.

PART VII.

PENALTIES.

65. Whoever intentionally makes any false

Punishments— for false oath, declaration, notice or certificate for procuring marriage;

oath or declaration, or signs any false notice or certificate required by this Act, for the purpose of procuring any marriage, shall be deemed guilty of the offence described in section one

hundred and ninety-three of the Indian Penal Code.

66. Whoever forbids the issue by a Marriage

for forbidding, by false personation, issue of certificate by Marriage Registrar;

Registrar of a certificate by falsely representing himself or herself to be a person whose consent to the marriage is required by law,

knowing such representation to be false, shall be deemed guilty of the offence described in section two hundred and five of the Indian Penal Code.

67. Whoever, not being authorized under this

for solemnizing marriage without due authority;

Act to solemnize a marriage in the absence of a Marriage Registrar of the district in which such marriage is

solemnized, knowingly solemnizes a marriage between persons one or both of whom professes or profess the Christian Religion, shall be punished with imprisonment which may extend to ten years, and shall also be liable to fine; or, in lieu of a sentence of imprisonment for seven years or upwards, to transportation for a term of not less than seven years and not exceeding ten years;

or, if the offender be an European or American, to penal servitude according to the provisions of Act No. XXIV of 1855 (*to substitute penal servitude for the punishment of transportation in respect of European and American convicts, and to amend the law relating to the removal of such convicts*).

68. Whoever knowingly and wilfully solemnizes a marriage between

for solemnizing marriage out of proper time, or without witnesses;

persons one or both of whom professes or profess the Christian Religion at any time other than between the hours of six in the morning and seven in the evening, or in the absence of at least two credible witnesses, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

The provisions of this section shall not apply

excepting marriages solemnized under special license;

to marriages solemnized under special licenses granted by the Anglican Bishop of the Diocese or by his

Commissary, nor to marriages performed between the hours of seven in the evening and six in the morning by a Clergyman of the Church of Rome, when he has received the general or special license in that behalf mentioned in section ten.

69. Any Minister of Religion licensed to so-

for solemnizing, without notice or within fourteen days after notice, marriage with minor;

lemnize marriages under this Act, who, without notice in writing, or when one of the parties to the marriage, not being a widower or widow, is a minor, and the required consent of the parents or guardian to such marriage has not been obtained, within fourteen days after the receipt by him of notice of such marriage, knowingly and wilfully solemnizes a marriage under Part III, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

70. A Marriage Registrar under this Act, who for issuing certificate, commits any of the following offences ;

or marrying, without publication of notice ; (1) knowingly and wilfully issues any certificate for marriage, or solemnizes any marriage, without publishing or affixing in some conspicuous place the notice of such marriage as directed by this Act ;

(2) after the expiration of two months after a certificate in respect of a marriage shall have been issued by him, solemnizes such marriage ;

(3) without an order of a competent Court authorizing him to do so, solemnizes any marriage when one of the persons intending marriage (not being a widower or widow) is a minor before the expiration of fourteen days after the receipt of such notice, or without sending, by the post or otherwise, a copy of such notice of marriage to the Senior Marriage Registrar of the district (if there be more Marriage Registrars of the district than one), and, if he himself be not the Senior Marriage Registrar ;

(4) issues any certificate, the issue of which shall have been prohibited as in this Act provided by any person authorized to prohibit the issue thereof,

shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

71. Any Marriage Registrar knowingly and wilfully issuing any certificate for marriage after the expiration of three months after the notice has been entered by him as aforesaid, or knowingly and wilfully issuing, without the order of a competent Court authorizing him so to do, any certificate for marriage, where one of the parties intending marriage (not being a widower or widow) is under twenty-one years of age, before the expiration of fourteen days after the entry of such notice or any certificate the issue of which has been forbidden as aforesaid by any person authorized to forbid such issue, shall be deemed to have committed an offence under section one hundred and sixty-six of the Indian Penal Code.

for unauthorizedly marrying according to usage of—
the Church of England,

72. Whoever, being a person authorized under the provisions of this Act to solemnize a marriage,

and not being a Clergyman of the Church of England, solemnizing a marriage after due publication of banns or under a license from the Anglican Bishop of the Diocese or a surrogate duly authorized in that behalf,

or, not being a Clergyman of the Church of Scotland, solemnizing a marriage according to the rules, rites, ceremonies, and customs of that church,

or, not being a Clergyman of the Church of Rome, solemnizing a marriage according to the rites, rules, ceremonies, and customs of that church,

knowingly and wilfully issues any certificate for issuing certificate for marriage under this Act, or marrying without or solemnizes any marriage publishing notice, between such persons as aforesaid, without publishing, or causing to be affixed, the notice of such marriage as directed in Part III of this Act, or after the expiration of two months after the certificate shall have been issued by him ;

or knowingly and wilfully issues any certificate for issuing certificate for marriage, or solemnizes for, or solemnizing, a marriage between such marriage with minor, persons when one of the persons intending marriage, within fourteen days after notice ; not being a widower or widow, is a minor, before the expiration of fourteen days after the receipt of notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Marriage Registrar, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar of the district ;

or knowingly and wilfully issues any certificate, the issue of which has been forbidden under this Act by any person authorized to forbid the issue ;

or knowingly and wilfully solemnizes any for solemnizing marriage authorizedly forbidden. marriage forbidden by any person authorized to forbid the same,

shall be punished with imprisonment for a term which may extend to four years, and shall also be liable to fine.

73. Whoever, not being licensed to grant a certificate of marriage under Part VI of this Act, grants such certificate intending thereby to make it appear that he is so licensed, shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

74. Whoever wilfully destroys or injures, or causes to be destroyed or injured, any Register book or the counterfoil certificates thereof, or any part thereof, or any authenticated extract therefrom,

or falsely makes or counterfeits any part of such Register book or counterfoil certificates,

or wilfully inserts, or causes to be inserted, any false entry in any such Register book or counterfoil certificate or authenticated extract,

shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

75. All prosecutions under this Act shall be commenced within the space of two years after the offence is committed.

Limitation of prosecutions.

PART VIII.

MISCELLANEOUS.

76. No European British subject and no person domiciled in any country by the law of which polygamy is prohibited shall acquire a right to practise polygamy by any change in his religious belief.

77. If any person who has contracted any such marriage as is provided for by this Act, or any other marriage which by the law to which he is subject would render any subsequent marriage during its continuance illegal, marries any other person during the continuance of such marriage, he shall, whatever religion he may profess at the time of such subsequent marriage, be deemed guilty of the offence described in section four hundred and ninety-four of the Indian Penal Code, and every such subsequent marriage shall be void.

78. Whenever any marriage has been solemnized in accordance with the provisions of sections four and five, it shall not be void merely on account of any irregularity in respect of any of the following matters, namely:

(1).—Any statement made in regard to the dwelling of the persons married, or the consent of any person whose consent to such marriage is required by law:

(2).—The notice of the marriage:

(3).—The certificate or translation thereof:

(4).—The time at which the marriage may have been solemnized—

79. Every person charged with the duty of registering any marriage, who shall discover any error to have been committed in the form or substance of any entry, may, within one month next after the discovery of such error, in the presence of the persons married, or, in case of their death or absence, in the presence of two other credible witnesses, who shall respectively attest the same, correct the erroneous entry according to the truth of the case, by entry in the margin without any alteration of the original entry, and shall sign the marginal entry, and add thereunto the day of the month and year when such correction shall be made, and such person shall make the like marginal entry, attested in the like manner, in the certificate thereof.

And, in case such certificate has been already transmitted to the Secretary to the Local Government, such person shall make and transmit in like manner a separate certificate of the original erroneous entry, and of the marginal correction therein made.

80. Every person solemnizing a marriage under this Act, and hereby required to register the same, and every Marriage Registrar or Secretary to a Local Government having the custody for the time being of any register of marriages, or of any certificate or copies of certificate under this Act, shall, at all reasonable times, allow searches to be made of any marriage Register book, or of any certificate, or duplicate, or copies of certificate, in his custody, and shall give a copy under his hand of any entry in the same, on the payment of the fees prescribed by the Local Government under section eighty-three.

81. Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any marriage register or certificate, or duplicate certificate, required to be kept or delivered under this Act, of any entry of a marriage in such register, or of any such certificate or duplicate certificate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further proof of such register or certificate, or duplicate copy, or of any entry therein, respectively, or of such copy.

82. The Secretary to the Local Government shall, at the end of every quarter in each year, select from the certificates of marriages forwarded to him during such quarter, the certificates of the marriages of which the Governor General of India in Council may desire that evidence shall be transmitted to England, and forward the same certificates signed by him to the Secretary of State for India for the purpose of being delivered to the Registrar General of Births, Deaths, and Marriages.

83. The Local Government shall determine what fees shall be chargeable under this Act for

the receipt and publication of notices of marriages;

the issue of certificates of marriage and the registration of marriages by Marriage Registrars;

and for the entry of protests with, or prohibitions of, the issue of marriage certificates by the said Registrars;

for searching Register books, or certificates, or duplicates, or copies thereof;

and for the issue of copies of entries in the same under sections sixty-three and eighty;

and may from time to time vary or remit such fees either generally or in special cases, as to it may seem fit.

84. The Local Government may make rules in regard to the disposal of the fees mentioned in section eighty-three, the supply of Register books, and the preparation and submission of returns of marriages solemnized under this Act.

SCHEDULE I.

NOTICE OF MARRIAGE.

To a Minister [*or Registrar*] of

I hereby give you notice that a marriage is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described (that is to say) :—

Names.	Condition.	Rank or profession.	Age.	Dwelling place.	Length of residence.	Church, chapel or place of worship in which the marriage is to be solemnized.	District in which the other party resides, when the parties dwell in different districts.
<i>James Smith.</i>	<i>Widower.</i>	<i>Carpenter.</i>	<i>Of full age.</i>	<i>16, Clive Street.</i>	<i>23 days.</i>	<i>Free Church of Scotland Church, Calcutta.</i>	
<i>Martha Green.</i>	<i>Spinster.</i>	<i>.....</i>	<i>Minor.</i>	<i>20, Hastings' Street.</i>	<i>More than a month.</i>		

Witness my hand, this

day of

seventy-two.

(Signed) *JAMES SMITH.*

[The *Italics* in this schedule are to be filled up as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.]

SCHEDULE II.

CERTIFICATE OF RECEIPT OF NOTICE.

I,
do hereby certify that, on the day of , notice was duly entered in my Marriage Notice Book of the marriage intended between the parties therein named and described, delivered under the hand of , one of the parties (that is to say) :—

Names.	Condition.	Rank or profession.	Age.	Dwelling place.	Length of residence.	Church, chapel or place of worship in which the marriage is to be solemnized.	District in which the other party resides, when the parties dwell in different districts.
<i>James Smith.</i>	<i>Widower.</i>	<i>Carpenter.</i>	<i>Of full age.</i>	<i>16, Clive Street.</i>	<i>23 days.</i>	<i>Free Church of Scotland Church, Calcutta.</i>	
<i>Mariha Green.</i>	<i>Spinster.</i>	<i>.....</i>	<i>Minor.</i>	<i>20, Hastings' Street.</i>	<i>More than a month.</i>		

and that the declaration required by section seventeen or forty-one of "The Indian Christian Marriage Act, 1872," has been duly made by the said (*James Smith*).

Date of notice entered

Date of certificate given

} The issue of this certificate has not been prohibited by any person authorized to forbid the issue thereof.

Witness my hand, this

day of

seventy-two.

(Signed)

This certificate will be void unless the marriage is solemnized on or before the day of

[The *Italics* in the schedule are to be filled up as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.]

SCHEDULE IV.
MARRIAGE REGISTER BOOK.

Number.	WHEN MARRIED.			NAMES OF PARTIES.		Age.	Condition.	Rank or profession.	Residence at the time of marriage.	Father's name and surname.
				Christian Name.	Surname.					
	Day.	Month.	Year.							
1				James	White	26 years	Widower	Carpenter	Agra	William White.
				Martha	Duncan	17 years	Spinster	.....	Agra	John Duncan.

Married in the

This marriage was solemnized between us { *James White,* } in the presence of us { *John Smith,* }
 { *Martha Duncan,* } { *John Green.* }

SCHEDULE IV,—continued.

CERTIFICATE OF MARRIAGE.

Number.	WHEN MARRIED.			NAMES OF PARTIES.		Age.	Condition.	Rank or profession.	Residence at the time of marriage.	Father's name and Surname.
	Day.	Month.	Year	Christian Name.	Surname.					
1				James	White	26 years	Widower	Carpenter	Agra	William White.
				Martha	Duncan	17 years	Spinster	.....	Agra	John Duncan.

Married in the

This marriage was solemnized between us { James White, } in the presence of us { John Smith, }
Martha Duncan, } John Green.

SCHEDULE V.

ENACTMENTS REPEALED.

Number and year.	Title.	Extent of Repeal.
Statute 58 Geo. 3, cap. 84.	An Act to remove doubts as to the validity of certain marriages had and solemnized within the British territories in India.	The whole.
Statute 14 & 15 Vic., cap. 40.	An Act for marriages in India...	The whole.
Act V of 1852	... An act for giving effect to the provisions of an Act of Parliament passed in the 15th year of the reign of Her present Majesty intituled "An Act for Marriages in India."	The whole.
Act V of 1865	... The Indian Marriage Act, 1865 ..	The whole.
Act XXII of 1866	... An Act to extend the Indian Marriage Act, 1865, to the Hyderabad Assigned Districts and the cantonments of Secunderabad, Trimungerry and Aurungabad.	The whole.

H. S. CUNNINGHAM,

*Offg. Secy. to the Council of the
Govr. Genl. for making Laws
and Regulations.*

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th March 1872, and was referred to a Select Committee with instructions to make their report thereon in a week :—

No. 8 of 1872.

A Bill to Amend Act XV of 1859.

WHEREAS, by Act XV of 1859, provision was made for the grant of certain privileges to the inventors of new manufactures; and whereas it is desirable that provision should be made for the grant of similar privileges to the inventors of new patterns and designs in British India; It is hereby enacted as follows :—

1. This Act may be called "The Patterns and Designs Protection Act, 1872."

It extends to the whole of British India, and shall come into force on the passing thereof.

2. At the end of section one of the said Act of 1859, the following shall be read :—

"For the purposes of this Act, 'New manufacture' shall be deemed to include any new and original pattern or design, or the

application of such pattern or design to any substance or article of manufacture."

3. At the end of section IV of the said Act, the following shall be read :—

"Provided that in the case of a pattern or design or the application thereof to any substance or article of manufacture, such privilege shall be granted for the term of three years and no more."

Addition to Act XV of 1859 after section XXXVII.

4. After section XXXVII of the said Act XV of 1859, the following shall be read :—

"XXXVIIA. Whenever, by any law for the time being in force in the United Kingdom, any person is entitled in the United Kingdom to an exclusive right in any pattern or design or in the application of such pattern or design to any substance or article of manufacture, such person shall be entitled in British India to the sole and exclusive right in such pattern or design or in such application thereof, and shall be entitled in British India to the same civil remedies in respect of any infringement thereof in British India, as those to which he would be entitled in the United Kingdom."

5. This Act shall be read with and as part of the said Act XV of 1859.

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is (1st) to provide that the privileges conferred by Act XV of 1859 on the inventors of new manufactures, may be extended to the inventors of new patterns and designs;

and, (2ndly), to provide for the enforcement in Indian Courts, of the rights of persons who have registered patterns and designs in the United Kingdom according to the English law, in the case of the infringement of those rights in British India.

R. STEWART.

The 18th March 1872.

H. S. CUNNINGHAM,
Offg. Secy. to the Council of the
Govr. Genl. for making Laws
and Regulations.

Government of Bengal.

LEGISLATIVE DEPARTMENT.

THE following Act of the Lieutenant Governor of Bengal in Council received the assent of His Honor on the 1st February 1872, and having been assented to by His Excellency the Governor General on the 7th March 1872, is hereby promulgated for general information:—

ACT No. I OF 1872.

An Act to extend the borrowing powers of the Justices of the Peace for the Town of Calcutta, and to provide for the repayment of municipal debt.

WHEREAS it is expedient to increase the amount which the Justices are authorized to borrow, by way of debentures or otherwise, under the provisions of Section 9 of Act IX of 1867, passed by the Lieutenant-Governor of Bengal in Council, and whereas it is expedient to provide for the repayment of municipal debentures and loans; It is hereby enacted as follows:—

1. In the said section, for the words "sum of fifty-five lakhs of rupees," wherever such words occur, shall be substituted the words "sum of eighty-five lakhs of rupees;" and the said section shall be hereafter read and construed as if the words hereby directed to be substituted were inserted in place of the words for which they are hereby directed to be substituted.

2. So soon as the aggregate sums from time to time borrowed by the Justices by way of debenture or otherwise, exclusive of any sums now due by them to the Secretary of

State for India in Council, shall amount to the said sum of eighty-five lakhs of rupees, the borrowing powers of the Justices shall thereupon cease and determine, save so far as they are hereinafter expressly reserved.

3. The Justices shall be bound to set aside yearly out of their annual income, before making any disbursements in respect thereof, a sum of not less than two per cent. on the total sum borrowed by the Justices, exclusive of the sum now due by them to the Secretary of State for India in Council, and shall appropriate the same, so far as it is required or will extend, to repay the amount (if any) of such loans or debentures issued by them as shall fall due in the course of the year. And they shall invest the surplus (if any) of the said sum after repayment as aforesaid; or in case there has not been any amount due or paid in respect of such loans or debentures during the year, then they shall invest the whole of the said sum in Government securities or in any securities guaranteed by Government, or in Calcutta Municipal debentures in the names of the Secretary to the Government of Bengal in the Revenue Department and the Accountant-General of the Government of Bengal, respectively for the time being, to be by them held as Trustees for the purpose of repaying at due date from time to time the several loans contracted or debentures issued by the Justices. And all moneys and securities now held by any Trustees appointed by the said Justices for the purpose of paying off any portion of the said fifty-five lakhs shall be forthwith transferred to the Trustees under this Act, and invested in their names and held by them upon the trusts hereinbefore declared. All interest accruing due to the Trustees shall also from time to time be invested by them in like manner and held upon the like trust.

4. It shall be the duty of the Trustees from time to time, whenever any loans or debentures shall fall due by the Justices, to realize the whole or a sufficient portion of the securities held by them as aforesaid, and appropriate the sale proceeds thereof, so far as the same will extend, to satisfy such loans or debentures. In case any balance in respect of such loans or debentures so falling due as aforesaid shall remain unsatisfied after appropriation thereto of the sale proceeds of the whole of such securities, then the Justices may, for the purpose of paying such unsatisfied balance, issue new debentures in manner as is provided by Act VI of 1863, passed by the Lieutenant-Governor of Bengal in Council, section 93, clause 3, or otherwise contract new loans for any sum not exceeding such amount as may be necessary for the purpose aforesaid.

5. The Trustees shall at the end of every year submit a statement to the Justices showing the amount which has been invested during the year under the third section of this Act, and setting forth the date of the last investment made previous thereto, and also the aggregate amount of the securities then in their hands, and the aggregate amount which has up to the date thereof been paid off in respect of the said debentures and loans. Such statement shall be laid before the Justices and published in the *Calcutta Gazette*.

6. This Act shall be read with and as part of Act VI of 1863, passed by the Lieutenant-Governor of Bengal in Council, and of the said Act IX of 1867.

HERBERT COWELL,
Asst. Secy. to the Govt. of Bengal.
Legislative Department.

THE following Act of the Lieutenant Governor of Bengal in Council received the assent of His Honor on the 13th February 1872, and having been assented to by His Excellency the Governor General on the 12th March 1872, is hereby promulgated for general information:—

ACT No. II of 1872.

An Act to amend the law for the registration of Jute Warehouses and to provide for the establishment of an efficient Fire-brigade.

WHEREAS it is expedient to amend so much of Act VI of 1866, passed by the Lieutenant-Governor of Bengal in Council, as provides for the registering and licensing of jute warehouses; and whereas it is expedient to provide for the organization and maintenance of a Fire-brigade; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

1. This Act may be called "The Jute Warehouse and Fire-brigade Act, 1872."

It extends to the whole of the town of Calcutta, and to such portions of the Suburbs thereof as are for the time being subject to the operation of Act II of 1866, passed by the Lieutenant-Governor of Bengal in Council, and also to the Municipality of Howrah. And it shall commence and take effect, except in the Municipality of Howrah, immediately upon the passing thereof. In the said Municipality it shall commence and take effect from such date as the Lieutenant-Governor may direct by notification published in the *Calcutta Gazette*.

2. The words mentioned in this section shall for the purposes of this Act have the meanings herein assigned to them, except when from the context a contrary intention appears.

"Jute" and "Cotton" mean respectively "Jute" and "Cotton" which have not been pressed or screwed as if for shipment.

"Person" includes a firm and a Hindu undivided family.

"Insurance Company" means any Association or person who may carry on the business of fire insurance, whether such Association be incorporated or not, and the agent or agents of such Association or person.

"Magistrate" includes a Justice of the Peace for Calcutta, and any person exercising all or any of the powers of a Magistrate.

"Jute Warehouse" means any warehouse, store, depôt, yard, godown or other place used for the storing, keeping, pressing, or depositing of jute or cotton

or other substance for the time being subject to the operation of this Act.

3. From and after the 31st July next after the passing of this Act, sections 38, 39, 40, and 41, of Act VI of 1866, passed by the Lieutenant-Governor of Bengal in Council, are hereby repealed, but such repeal shall not affect any registration made, or any act or offence done or committed, or any penalty or liability incurred under the said sections.

PART II.

JUTE WAREHOUSES.

4. No jute warehouse, existing at the date of the commencement of this Act within the limits of its operation, shall be used after the 31st July next following such date for the storing, keeping, pressing, or depositing of jute or cotton, unless the owner or occupier thereof shall have previously obtained a license under this Act for such use.

5. As soon as may be after the passing of this Act the Justices at a special meeting shall appoint from their own number a special committee, consisting of seven members, one of whom must be the Chairman of the Justices, whose duty it shall be to visit, inspect, and report on every jute warehouse existing within the town of Calcutta. And the special Committee shall report before the 15th day of the said month of July to the Justices whether a license can be granted to all or any such warehouses without risk to life and property in the neighbourhood thereof respectively. No jute warehouse shall be reported upon by the special committee until it shall have been visited by a quorum of not less than three members of the special committee. The Justices at a special meeting may award such fee as they may think fit to each member of the special committee, not being a salaried member of the corporation of Justices.

6. On receiving the report of the committee it shall be within the discretion of the Justices at a special meeting to grant or refuse a license for any jute warehouse mentioned in the said report. Provided that if in the opinion of the Justices the said jute warehouse may be rendered fit for use without risk to life or property in the neighbourhood thereof the Justices shall certify to the owner and occupier thereof the conditions and restrictions under which the said jute warehouse may in their opinion be so rendered fit for use, and upon the said owner or occupier complying with the terms of such conditions and restrictions to the satisfaction of the Justices at a special meeting they shall grant to him a license in respect thereof. Every license granted under this section shall be subject to the payment of an annual fee to be imposed and paid in manner as in the next succeeding section is directed, and to such other of the conditions mentioned therein as the Justices may think fit.

7. Any person proposing to establish a new jute warehouse within the town of Calcutta shall send to the Justices a plan of the warehouse so proposed to be established, and

it shall be within the discretion of the Justices at a special meeting to grant or refuse a license to establish the same.

Every license for a jute warehouse granted under this section shall be subject to the following conditions, *viz.* :—

(1.) That no loose jute, jute rejections or cuttings, or cotton, shall be stored or screwed, or pressed or combed or dried, save within a building, the walls of which shall be of burnt bricks or of stone or of iron, and all the roof of which, including the beams on which such roof rests, shall be of iron, or of masonry or of tiles;

(2.) That such jute warehouse and the buildings therein shall be supplied with solid doors or gates which can be securely closed;

(3.) That no portion of such jute warehouse shall be used as a residence, and no artificial light or lucifer matches shall be introduced therein, and that no person shall smoke therein;

(4.) That such jute warehouse shall be at any time open to inspection;

(5.) That the engines and furnaces used in such jute warehouse shall be placed as may be considered necessary for safety by the Justices;

(6.) That an annual fee, as the Justices at a special meeting may think fit, shall be imposed in respect thereof at one of the following rates, *viz.* :—

Rupees	...	1,000
"	...	750
"	...	500
"	...	250

and shall be paid in such instalments as the Justices may direct.

In fixing the amount of fee to be paid in respect of any jute warehouse, the Justices at such special meeting shall have regard to the annual value thereof as it is for the time being assessed to the payment of municipal taxes, to the size and position of the jute warehouse, to the number and excellence of the pressing machines erected in such jute warehouse, and to the probable income derived from such jute warehouse by its occupier or owner.

(7.) Such other special conditions as the Justices may, on consideration of the special circumstances of such jute warehouse, deem necessary to prevent risk to life and property in the neighbourhood.

8. The Justices shall appoint suitable officers for the inspection of jute warehouses within the town of Calcutta; and it shall be lawful for any officer so appointed, and for any superintendent or inspector of police within the said town, to enter at any time into any jute warehouse, where jute or cotton may be kept, and to inspect the same.

9. It shall be in the discretion of the Justices at a special meeting to cancel, or to suspend for such time as they shall think fit, the license of any jute warehouse in respect of which any one or more of the conditions under which such license has been granted shall appear to them to have been broken.

10. In regard to any jute warehouse situated or used or proposed to be established or used out of the town of Calcutta and within the limits of the operation of this Act, the powers and duties conferred and imposed by this Part, and by every section thereof upon the Justices, or the Justices at a special meeting, shall be exercised and discharged by the Municipal Commissioners, or the Municipal Commissioners at a meeting respectively within whose jurisdiction such jute warehouse is situated. The annual fee in respect of any license for a jute warehouse granted by the said Municipal Commissioners may be at the rate of Rs. 150, or at any one of the rates mentioned in section 7, clause 6.

Penalties.

11. Any person who shall after the 31st day of the said July without a license under this Act use any jute warehouse, for keeping or depositing jute or cotton, shall be liable, on conviction before a Magistrate, to a penalty not exceeding one hundred rupees for each day during which he may use or continue to use such jute warehouse as aforesaid.

12. Any person who shall without a license use any jute warehouse, for keeping or depositing jute or cotton established after the commencement of this Act shall be liable, on conviction before a Magistrate, to a penalty not exceeding five hundred rupees, and to a further penalty not exceeding fifty rupees for every day during which such jute warehouse is used for keeping or depositing jute or cotton without a license.

13. Any person who shall after the 31st day of the said July use a jute warehouse for the keeping or depositing of jute or cotton after the Justices or Municipal Commissioners shall have refused or cancelled a license in respect thereof, or during the time for which such license shall have been suspended, shall be liable, on conviction before a Magistrate, to a penalty not exceeding five hundred rupees, and to a further penalty not exceeding one hundred rupees for every day during which any such jute warehouse may be so used as aforesaid.

14. Whoever in contravention of the license shall introduce or use in any jute warehouse, in which jute or cotton is kept or deposited, any fire or lucifer matches or shall smoke therein, and whoever shall violate any of the conditions or restrictions under which the said license is granted, shall be liable on conviction before a Magistrate to a penalty not exceeding fifty rupees for any one such offence.

PART III.

FIRE-BRIGADE.

15. Within six months from the date of the passing of this Act the Justices shall organize and thereafter maintain an efficient fire-brigade for the town and suburbs of Calcutta.

All existing public fire-engines, with the establishments and buildings thereto belonging, except

those belonging to the Military Department or to the Port Commissioners incorporated under Act V of 1870, shall be transferred to the fire-brigade to be established under this Act. The Justices shall have power to appoint and remove any members or officers of the fire-brigade; and they shall furnish the fire-brigade with all such steam or other fire-engines, horses, oxen, accoutrements, tools, and implements, as may be necessary for the complete equipment of the force, or conducive to the efficient performance of their duties.

16. The Justices at a special meeting may frame bye-laws in respect of the following subjects:—

- (1.) Giving of gratuities to persons who have given notice of fires.
- (2.) Awarding gratuities by way of a gross sum or annual payment to be from time to time awarded to any member of the fire-brigade or other person specially deserving of reward.
- (3.) For the training, discipline, and good conduct of the members of the force; not being members of the Calcutta and Suburban Police Force.
- (4.) For the speedy attendance of such members with engines and all necessary implements on the occasion of any alarm of fire.
- (5.) Imposing and summarily realizing a fine not exceeding one week's wages from any member of the brigade who may infringe these bye-laws.
- (6.) And generally for the maintenance of the fire-brigade in a due state of efficiency.

17. On the occasion of a fire, the chief or other officer in charge of the fire-brigade on the spot may remove, or may order any member of the brigade to remove any persons whose presence shall interfere with the due operation of the brigade; and generally, he may take any measures which may appear necessary for the preservation of life and property; and he shall have power by himself or by his men to break into or through or pull down any premises for the purpose of putting an end to the fire, doing as little damage as possible; and he may also cause the mains and pipes of any district to be shut off so as to give greater pressure of water in the place where the fire has occurred. He may also call on the officer in charge of the 'Port Commissioners' fire-engine to render such assistance as may be possible in the case of any fire occurring near the river bank. The chief officer on the spot in charge of the brigade may verbally nominate and depute one or more officers of the brigade to act at a distance, and such officer or officers shall have for the time being the like powers as the chief officer himself possesses under this section.

Police officers of all grades shall be authorized to aid the fire-brigade in the execution of its duties. They may close any street in or near which a fire is burning, and they may, of their own motion or on the request of the chief or other officer of the fire-brigade, remove any persons who interfere by their presence with the operations of the fire-brigade.

Any damage done by the fire-brigade in the due execution of their duties shall be deemed to be damage by fire within the meaning of any policy of insurance of property in Calcutta or the suburbs against fire.

But nothing in this section shall exempt any officer of the police or of the fire-brigade from liability to damages on account of any acts done by him without reasonable cause.

18. In the case of any fire occurring in Calcutta or the suburbs the chief officer of the fire-brigade shall ascertain the facts as to the origin and cause of such fire and shall make a report thereon to the Magistrate having jurisdiction in the place in which such fire shall have occurred, and the said Magistrate, in any case where he may see fit, shall summon witnesses and take evidence in order to the further ascertainment of such facts.

LICENSES AND PENALTIES.

19. No person shall let off rockets or send up fire-balloons in the town or suburbs of Calcutta without a license from the Commissioner of Police, for which license a fee of ten rupees shall be payable.

20. No person shall sell or manufacture fire-works in the town or suburbs of Calcutta without a license from the Commissioner of Police, for which a yearly fee of ten Rupees shall be payable in advance.

21. Whoever shall let off rockets or send up fire-balloons in the town or suburbs of Calcutta without a license as aforesaid shall be liable on conviction before a Magistrate to a penalty not exceeding fifty rupees for any one such offence.

22. Whoever shall sell or manufacture fire-works in the town or suburbs of Calcutta without a license as aforesaid shall be liable on conviction before a Magistrate to a penalty not exceeding fifty rupees.

23. The Commissioner may at his discretion, and after thirty days' notice, withdraw or suspend any license granted by him under this Act.

24. In the event of any rockets being let off, or fire-balloons sent up within the precincts of any private premises or compound within the town or suburbs of Calcutta, without the express permission in writing of the Commissioner of Police, the occupier, or owner, or person under whose immediate control the said premises or compound is, shall be liable to a fine not exceeding fifty rupees, unless he can prove who the person having committed the offence is, and that the offence was committed without his knowledge.

PART IV.

EXPENSES AND FUNDS.

25. The Justices and Municipal Commissioners respectively shall apply the moneys derived from the fees and penalties levied under this Act within their respective jurisdictions in payment of all expenses incurred by them respectively in or about the inspection and superintendence of jute warehouses, and the granting of licenses in respect thereof. In the case of Calcutta and the suburbs, the balance of such monies after payment of the said expenses shall be paid to the credit of an account in the books of the Justices to be called the fire-brigade account.

26. Every Insurance Company that insures from fire any property within the town and suburbs of Calcutta shall pay annually to the Justices, by way of contribution towards the expenses of the said fire-brigade, a sum at the rate of half a rupee for every ten thousand rupees on the gross amount insured by it in respect of such property. All sums paid to the Justices under this section shall be credited to the fire-brigade fund. The said payments shall be made quarterly in advance, on such dates as the Justices may appoint: and arrears on account of these payments shall be realizable as if they were arrears of rates due to the Justices, and all the provisions of Act VI of 1863 (passed by the Lieutenant-Governor of Bengal in Council) and of any Act amending the same shall be applicable so far as the circumstances will permit to the recovery of moneys due under this section.

27. For the purpose of ascertaining the amount to be contributed by every such Insurance Company as aforesaid, every Insurance Company insuring property from fire within the town and suburbs of Calcutta shall, on the 30th day of June 1872, and on every succeeding 30th day of June, or on such other days as the Justices may appoint, make a return to the said Justices, in such form as they may require, of the gross amount insured by it in respect of property within the said town and suburbs. At the foot of every such return shall be appended a certificate by the Secretary or chief officer or manager of such Insurance Company in Calcutta, stating that to the best of his knowledge and belief the return contains a true and faithful account of the sums insured by the Company to which he belongs in respect of such property. Such Secretary or chief officer or manager shall allow either the Chairman or the Vice-Chairman or the Secretary to the Justices to inspect at any time during the hours of business any books and papers that will enable him to ascertain the correctness of the return; and every Secretary or chief officer or manager as aforesaid failing to comply with the requisition of this section in respect of such inspection shall be liable, on conviction before a Magistrate, to a penalty not exceeding fifty rupees for each offence. The Justices on receiving the report of such inspection may alter the return accordingly.

The return made in the June of one year, or such return as altered on inspection by the Justices, shall be the basis of the contributions for the year beginning on the first day of January next succeeding.

28. If any Insurance Company makes default in making such returns to the Justices as are required by this Act, the said Company or Secretary or chief officer or manager thereof shall be liable to a penalty not exceeding fifty rupees for every day during which it is so in default.

29. The cost of all establishments and plant hired or purchased, and of all other charges under Part III of this Act, shall be paid from the fire-brigade fund. The full amount of such charges over and above the moneys which may accrue to the fire-brigade fund under sections 25 and 26 of this Act, shall be contributed by the Justices, and by the Commissioners of the suburbs, in the following proportions, namely,—by the Justices, seven-tenths; by the said Commissioners, three-tenths. At the end of each quarter of a year, the Justices shall certify to the said Commissioners the total cost of the fire-brigade for such year, the money which may have accrued under sections 25 and 26 of this Act, and the precise sum which must be paid by each body charged with the cost of the Calcutta fire-brigade under this Act. On the receipt of such certificate, the said Commissioners shall pay the sum certified against them by the Justices: provided that in no case shall the three-tenths payable by the said Commissioners in any year after the first year of the establishment of the fire-brigade exceed the sum of ten thousand rupees.

PART V.

MISCELLANEOUS.

30. It shall be lawful for the Lieutenant-Governor of Bengal, on the recommendation of the Justices passed by resolution, to declare that any other fibre or any commodity which is stored or deposited in warehouses besides jute or cotton shall be warehoused and kept subject to the provisions of Part II of this Act. When such declaration shall have been made in the *Calcutta Gazette*, this Act shall be read as if the name or names of the said fibre or commodity had been printed in addition to the words "jute" or "cotton" in the several sections of Part II wherein the said words "jute" or "cotton" may occur.

31. The Justices and Municipal Commissioners respectively shall make a report to the Lieutenant-Governor as soon as conveniently may be after the 31st July next, showing how the provisions of this Act have been carried out, and specifying the jute warehouses in respect of which licenses have been granted. Such reports shall be forthwith published in the *Calcutta Gazette*. And

thereafter the Justices and Municipal Commissioners shall make a like report once a year at such time as the Lieutenant-Governor shall direct.

32. Any person committing any offence in respect of which a penalty is provided by section 14 or section 24 of this Act may, if his name and address be unknown, be arrested by any officer to be by the Justices or the Municipal Commissioners within their respective jurisdictions thereunto appointed, and by such officer or any person by him thereunto authorized, or by any officer of police, forthwith conveyed before some Magistrate having jurisdiction in the place in which such offence shall have been committed, or shall be taken to the nearest police station within the said jurisdiction in order that such person may be detained until he can be brought before a Magistrate, or until he shall enter into recognizance with or without sureties, for his appearance before a Magistrate.

33. Whenever such person shall be taken to a police station, the officer in charge of such station shall, as soon as conveniently may be, cause him to be conveyed before some Magistrate having jurisdiction in the matter.

34. Whenever any person shall be charged with the commission of any offence under this Act before a Magistrate, such Magistrate may forthwith hear and summarily determine the charge of such offence. Any thing made punishable by this Act shall be deemed to be an offence within the meaning of the Indian Penal Code, and without the limits of the town of Calcutta, shall be dealt with, save as herein otherwise provided, under the provisions of chapter XV of the Code of Criminal Procedure.

35. This Act so far as it relates to the town of Calcutta shall be read with, and taken as part of the said Act VI of 1863, and the subsequent Acts amending the same; and so far as it relates to the suburbs of Calcutta, or to the Municipality of Howrah, it shall be read with and taken as part of Act III of 1864, passed by the Lieutenant-Governor of Bengal in Council, and of the subsequent Acts amending the same.

HERBERT COWELL,

Asst. Secy. to the Govt. of Bengal,

Legislative Department.

THE following Bill was read in the Council of the Lieutenant-Governor of Bengal for the purpose of making Laws and Regulations on the 20th January 1872, and was referred to a Select Committee who are to report thereon after the 24th February next:—

THE BENGAL MUNICIPALITIES BILL, 1872.

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A Bill to amend and consolidate the law relating to Municipalities.

WHEREAS it is expedient to amend and consolidate the law relating to Municipalities within the territories subject to the government of the Lieutenant-Governor of Bengal, and to make better provision for the self-government of towns and places within the said territories, for the maintenance of police, for the conservancy and improvement of such towns and places, for the diffusion of education therein, and for other objects of utility calculated to promote the health, comfort, or convenience of the inhabitants of the said towns; It is enacted as follows:—

1. This Act may be cited as the "Bengal Municipalities Act, 1872."

Short title.

PART I.—PRELIMINARY.

Divisions of Act.

2. This Act shall be divided into thirteen several heads or parts:—

- the *first* relating to preliminary matters;
- the *second* relating to municipal authorities;
- the *third* relating to municipal taxation;
- the *fourth* relating to the mode of recovery of municipal taxes;
- the *fifth* relating to the municipal fund and its application.
- the *sixth* relating to the registration of births and deaths;
- the *seventh* relating to the municipal police;
- the *eighth* relating to the intervention by Government in municipal affairs.
- the *ninth* relating to various municipal regulations for conservancy and otherwise;
- the *tenth* relating to municipal markets;
- the *eleventh* relating to the jurisdiction of Commissioners in municipal and other cases;
- the *twelfth* relating to third class municipalities;
- the *thirteenth* relating to miscellaneous matters.

3. The following words and expressions in this Act shall have the several meanings hereby assigned to them, except where a different intention shall appear from the context, (that is to say)—

“Magistrate of the district” means the chief officer charged with the executive administration of a district in criminal matters by whatsoever designation such officer is called.

“Magistrate” means the officer exercising all or any of the powers of a Magistrate, and charged with the immediate executive administration in criminal matters in any sub-division of a district, within which any place to which this Act may be extended may be situated, by whatsoever designation such officer is called. In respect to any such place which is not situated within a sub-division of a district, the powers by this Act conferred on the Magistrate may be exercised by the Magistrate of the district or by a Joint-Magistrate.

“Sub-divisional officer” means the officer in executive charge of a sub-divisional district.

“Municipality” means any place to which this Act or part thereof shall have been extended. A Municipality created under this Act shall be distinguished as a first class Municipality, or as a second class Municipality, in manner as in the next succeeding section is provided. Any place to

which Part XII of this Act shall have been extended shall be deemed to be a third class Municipality.

“The Commissioners” means the persons appointed or elected by the rate-payers to conduct the affairs of any Municipality under this Act, and shall include ex-officio Commissioners under this Act.

“House.” “House” includes any hut, shop, or warehouse.

“Place” includes any town, village, hamlet, suburb, bazaar, station, or tract of country.

“Land.” “Land” includes fields, plantations, and gardens.

“Bazaar” includes any place of trade where there is a collection of shops or warehouses, and any place where a market is held.

“Road” means any road, street, square, court, alley or passage, whether a thoroughfare or not, over which the public have a right of way, together with such land (not being private property) whether covered or not by any pavement, verandah, or other erection or structure, as may be between the roadway and the main wall of any house or houses adjacent thereto; and also the roadway over any public bridge or causeway within the place; and the expression “in or near any road” designates any site within the place. Provided that nothing in this section shall be taken to interfere with any easement enjoyed by any person in respect of such land at the date of the passing of this Act.

“Owner” means the person for the time being receiving the rent of the land or premises, whether paid in money or in kind, or in charge of the thing in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the rent if such land or premises were let to a tenant. Provided that no person receiving the rent of land or premises as agent for another person shall be liable to make any outlay by this Act required to be made by the owner of such and or premises in excess of the amount of the funds, or of the value of the produce belonging to the owner which he may have in his possession; nor shall he be subject to any penalty if he can prove that he has made the outlay required to the extent of such funds.

“Official year” means the year beginning on the first day of April, or such other date as may hereafter be fixed by the Lieutenant-Governor of Bengal by notification in the *Calcutta Gazette*.

4. All the provisions of this Act, except those contained in Part XII, shall have effect in any place not being within the limits of the town of Calcutta and of the southern portion of Hastings as defined by Act V of 1868 (passed by the Lieutenant-Governor of Bengal in Council), to which the Lieutenant-Governor of Bengal may extend the same, and from such date as may by him be specified,

by notification in the *Calcutta Gazette*. Provided that every such notification shall specify such provisions of Parts IX and X of this Act as are thereby extended to such place, and all provisions contained in the two last mentioned parts as are not specially mentioned in the said notification shall be deemed to be of no force or effect whatever in the place to which such notification applies. From and after the date mentioned in the said notification such place shall be deemed and taken to be created a Municipality for the purposes of this Act; and it shall be lawful for the Lieutenant-Governor to define the limits of such Municipality, and from time to time to alter or amend such definition, and the Lieutenant-Governor shall declare at the time of extending the said Act to such place, whether the same shall, for the purposes of this Act, be a first class or a second class Municipality, and may at any time thereafter by notification alter the class. The Lieutenant-Governor may further, from time to time, by notification in the *Calcutta Gazette*, declare to be united for the purposes of this Act, any number of towns or villages or parts thereof; provided that no portion of this Act shall be extended to any village inhabited by persons more than one-half of whom may be employed in agriculture only, or dependent for support on lands so employed, or habitually exercising trades and occupations only for the use of persons so employed, except the provisions of Parts XII and XIII of this Act. All the provisions of Parts XII and XIII of this Act shall have effect in any place to which the same may be extended by the Lieutenant-Governor or by any officer empowered in that regard under Section 202 of this Act.

5. From and after the creation of any Municipality under the provisions of the next preceding section, the provisions of the Acts named in Schedule (A) hereto annexed shall cease to have effect therein, except as to any assessment made, or as to any act done, or as to any liability incurred, or as to any money due, or as to any proceedings theretofore commenced. Provided that the repeal by this Act of any enactment shall not affect any Act in which such enactment has been applied or referred to. And all references made to any of the Acts named in the said schedule in subsequent Acts, orders or contracts, shall be read, so far as the context will allow, as if made to this Act.

6. All lands, buildings, works, and hereditaments, utensils, materials, books, plans, maps, papers, effects, securities, and monies whether derived under the Acts mentioned in Schedule (A) appended to this Act, and other property, movable and immovable, of what nature or kind soever, and all interest therein, whether vested, contingent, or in remainder which shall, on the date on which this Act shall take effect in such town, be vested in, or held in trust for, the Commissioners or Committee appointed under any of the said Acts, who shall hereafter in this Act be designated the late Commissioners, or which would have been vested in, or held in trust for, such Commissioners but for the passing of this Act; and all such estate and interest of and in the same respectively as shall then be, or would have been in, or in trust for, the said late Commissioners or any of them, with all rights of way and other rights

and easements now used and enjoyed by the said Commissioners shall, on and from the date when this Act comes into operation in such town, be vested in the Commissioners under this Act and their successors; and all persons who shall then owe any money to the late Commissioners, or to any person on their behalf, shall pay the same to the Commissioners under this Act, or as they shall direct: and all monies which shall be then due, and owing by, or recoverable from, the late Commissioners, shall be paid by, or be recoverable from, the Commissioners; and all contracts, agreements, mortgages, bonds, covenants, and securities made or entered into before this Act comes into operation to, with, or in favor of, or by, or for, the said late Commissioners, or any of them, or any person on behalf of such late Commissioners; and all rights of action and suit arising out of contract or otherwise—shall take effect, and may be proceeded on and enforced, as far as circumstances will admit, in favor of, by, against, and with reference to the Commissioners under this Act in such manner as the same would have taken effect, and might have been proceeded on and enforced in favor of, by, against, and with reference to the said late Commissioners, or any of them, if this Act had not been passed.

7. No action, suit, prosecution, or other proceeding whatsoever, commenced or carried on either by or against the late Commissioners previously to the coming into operation of this Act, shall abate, or be discontinued, or prejudicially affected by this Act, but shall continue and take effect both in favor of and against the Commissioners, in the same manner in all respects as the same would have continued and taken effect in relation to the late Commissioners, or any of them, if this Act had not been passed: and all decrees and orders made, and all fines and penalties imposed and incurred, respectively, previously to the coming into operation of this Act, shall and may be enforced, levied, recovered, and proceeded for, and all administrative proceedings commenced previously to the coming into operation of this Act shall and may be continued, proceeded with, and completed in such or the like manner as if this Act had not been passed, the Commissioners under this Act being, in reference to the matters aforesaid, in all respects substituted for the late Commissioners.

PART II.—MUNICIPAL AUTHORITIES.

Chapter 1.

Municipal Commissioners.

8. In any Municipality created under Part I of this Act, the Lieutenant-Governor shall, if the same shall have been declared by him to be a first class Municipality, and the said Lieutenant-Governor or any officer whom the Lieutenant-Governor may authorize in that behalf shall, if the same shall have been declared by the said Lieutenant-Governor to be a second class Municipality, from time to time appoint or cause to be elected, in manner as hereinafter provided, not more than seven and not less than three persons to be Commissioners for carrying out in such Municipality the purposes of this Act.

9. No person shall be appointed a Commissioner or a Member of a Ward Committee under this Act in any Municipality, who does not either reside or hold land or buildings therein or within five miles from any part of the limits thereof: provided also that when the mode of municipal taxation to be adopted therein shall have once been determined, no person shall be appointed therein a Commissioner or member of a Ward Committee who does not pay municipal taxes to the Commissioners thereof. Subject to the provisions of Section 12 every person so appointed shall continue in office three years, or until his successor shall have been appointed, and shall be eligible for re-appointment. The Lieutenant-Governor may from time to time accept the resignation of any such Commissioners or Commissioner, or may remove any such Commissioners or Commissioner for misconduct or neglect of duty, add to their number, and fill up vacancies occurring among them.

10. In addition to the Commissioners to be appointed or elected as aforesaid, the Magistrate of a district and the Magistrate in charge of a sub-division of a district, shall be ex-officio Commissioners of every Municipality situated within their respective jurisdictions, and it shall further be competent to the Lieutenant-Governor to appoint as a Commissioner of any such Municipality any officer in the service of Government holding a salaried office in the district in which the same is situate: provided that not more than one-third of the whole number of Commissioners shall be persons holding salaried offices in the service of Government, unless such persons be elected to be Commissioners under any of the provisions in this Act contained.

11. If at any time it shall appear to the Lieutenant-Governor of Bengal to be advisable that a certain number of the Commissioners of any Municipality shall be elected by the rate-payers, it shall be competent to the said Lieutenant-Governor to take measures for the election of such Commissioners by the rate-payers, subject to such rules in regard to qualification, election, and discharge, as he may think fit. Subject to the provisions of Section 12 the persons so elected shall continue in office for the term of three years, or until their successors have been elected, and shall be eligible for re-election. The Lieutenant-Governor may from time to time accept the resignation of any of the Commissioners so elected, or may remove any of such Commissioners for misconduct or neglect of duty, and may provide for filling up vacancies by election.

12. When Municipal Commissioners or any Ward Committee shall be for the first time appointed or elected in any Municipality, such number of the members thereof as the Commissioner of the Division may determine, and being not more than one-third of the whole, shall retire at the end of one year, and another equal number at the end of two years, and the rest at the end of three years, to be computed from the first day of the official year next following the date of the appointment or election of such Commissioners or Committee. The members who shall retire at the end of the first and

second years respectively shall be decided by lot. But the ex-officio members appointed under Section 10 of this Act shall not be liable to retirement under this Section. Any person appointed or elected to a vacancy caused by the withdrawal, or removal, or death of another member shall fill such vacancy for the unexpired remainder of the term for which the outgoing member, may have been elected or appointed. The Chairman shall keep a roll in which the names of the Commissioners shall be entered in order of seniority according to the dates of their appointment or election. In case of two or more Commissioners being appointed or elected on the same day, the Chairman shall decide the order of seniority between them.

13. The Magistrate of a district, or the Magistrate in charge of a sub-division, if delegated by the Magistrate for the purpose, shall be ex-officio Chairman of the Commissioners for any Municipality situate within the district or sub-division under his charge. The Commissioners shall elect their own Vice-Chairman, who shall hold office for one year from the date of his election, and who shall be eligible for re-election at the end of such year.

14. The Commissioners shall have and use a common seal, and shall have their names engraved thereon in legible characters in the English language, and also in the vernacular language of the district. All contracts entered into in respect of any sum exceeding twenty rupees shall be in writing, and shall be sealed with the common seal of the Commissioners, and on their behalf, in the presence of at least two of the Commissioners, one of whom shall be the Chairman, or in the absence of the Chairman, the Vice-Chairman, who shall certify the same by affixing their signatures as witnesses at the foot of the instruments. All such contracts shall be varied or discharged in a similar manner.

15. The Commissioners shall sue and be sued in the name of their Chairman by the description of "The Chairman of the Commissioners of" and in such name so described, they shall be competent to hold property, movable and immovable, to them and their successors as a body corporate, and to convey the same and to enter into all necessary contracts for the purposes of this Act.

CHAPTER 2.

Property and Contracts of the Commissioners.

16. All public streets in any Municipality (not being private property) existing at the time this Act comes into operation, or which shall afterwards be made, and the pavements, stones, and other materials thereof, and also all erections, materials, implements, and other things provided for such streets, shall vest in and belong to the Commissioners and their successors. But it shall be competent to Government from time to time, by notification, to exclude any road or street from the operation of this Act, and to cancel such notification wholly or in part.

17. It shall be lawful for the Commissioners to agree with the person or persons in whom the property in any street is vested, to take over the property therein, and after such agreement to declare, by notice in writing put up in any part of such street, that the same has become a public street. Thereupon such street shall vest in the Commissioners and their successors, and shall thenceforth be repaired and kept up out of the Municipal Fund.

18. All or any hospitals, dispensaries, schools, rest-houses, markets, tanks, and wells, not being private property, or the property of a religious institution or society, and all medicines, furniture, and other articles appurtenant thereto, not being private property, which at the time this Act comes into operation in any town, shall be found therein, may, by notification of the Lieutenant-Governor, be vested in the Commissioners, and thereupon all endowments or funds belonging to such hospitals, dispensaries, schools, or rest-houses shall be transferred to and vested in the Commissioners as trustees, to hold and apply the same to the purposes to which such endowments and funds were lawfully applicable at the time of such transfer. Provided always that no such notification shall be issued until one month after the intention to transfer such property shall have been notified in English and in the vernacular language of the district in such manner as the Lieutenant-Governor shall from time to time direct.

19. The Commissioners may agree with the owners of any land for the purchase thereof for the purposes of this Act, and may sell any land not required for such purposes either together or in parcels, and the proceeds of such sale shall be applied for the purposes of this Act.

20. When the Commissioners may be unable to agree with the owner of any land for the purchase thereof, the Lieutenant-Governor of Bengal may, upon representation of the Commissioners, and after such enquiry as may be thought proper, declare that the land is needed for a public purpose, and may order proceedings for obtaining possession of the same for the Government, and for determining the compensation to be paid to the parties interested, according to any law now or hereafter to be in force for the acquisition of land for public purposes. On payment by the Commissioners of the compensation awarded, such land shall vest in them for the purposes of this Act.

CHAPTER 3.

Their mode of transacting business.

21. The Commissioners shall keep an office where they shall meet for the transaction of business at least twice in every month, and as often as a meeting shall be called by the Chairman or Vice-Chairman, and all questions which may come before them at any meeting shall be decided by a majority.

22. The Chairman, or, in his absence, the Vice-Chairman, shall preside at every such meeting, and in the absence of both the Chairman and Vice-Chairman, the Commissioners shall choose some one of their number to preside. In cases of equality of votes the President shall have a casting vote.

23. No business shall be transacted at a meeting unless at least four Commissioners be present.

24. In any case of emergency, the Chairman, or, in his absence, the Vice-Chairman, shall exercise all the powers vested by this Act in the Commissioners. Provided that it shall not be lawful for the Chairman or the Vice-Chairman to exercise any power which it is by this Act expressly declared shall be exercised by the Commissioners at a meeting. Any Chairman or Vice-Chairman acting under this section shall inform the Commissioners thereof at the next meeting held thereafter.

25. The Chairman shall from time to time appoint all such overseers, clerks, and subordinate officers and servants as he may think necessary and proper to assist in the execution of this Act, and may from time to time remove any of such persons and appoint others in their places. And out of the Municipal Fund he shall pay, or cause to be paid, such salaries to the said persons respectively, as may from time to time be determined by the Commissioners at a meeting; or, in case of absence on leave, such portion thereof as may appear to the Commissioners to be reasonable. He may, with the sanction of the Commissioners, make such rules as he may think fit as to the manner in which, and as to the persons by whom, all duties connected with the collection of the tax or the preparation of the assessment, shall be performed, provided such rules be in all respects consistent with the provisions in this Act contained. Provided that no salary amounting to more than one hundred and fifty rupees a month shall be assigned to any officer or clerk by Municipal Commissioners under this Act without the sanction of the Commissioner of the Division. He shall also take from every collector of Municipal taxes, duties, or tolls, such security for the sums collected by him as he may think proper.

CHAPTER 4.

Ward Committees.

26. It shall be lawful for the Magistrate, on the recommendation of the Commissioners at a meeting, to divide any Municipality into wards, and thereupon there shall be appointed for each ward not less than three persons qualified to be Commissioners, whether such persons be or be not Commissioners for the time being, to be members of the Ward Committee, and the said Magistrate may define the limits of the ward for which any Ward Committee may be appointed or elected. All question regarding the removal, resignation, and filling up vacancies among the members of Ward Committees shall be settled by the Commissioner at a meeting.

27. A Ward Committee shall exercise, within the limits of their ward, as defined by the Magistrate, all or any of the powers of Commissioners described in Sections 25, 52, 53, 61 to 68 inclusive, 113, 115, and in such sections of Part IX of this Act as shall be in force within the municipality, which the Commissioners at a meeting shall have delegated to them. Sections 21, 22, and 24 of the Act shall, as far as may be convenient, be applicable to Ward Committees.

28. The Chairman of each Ward Committee shall be appointed by the man of Ward Committees. Chairman of the Commissioners, and each Ward Committee may, if it see fit, elect their own Vice-Chairman from among their own number.

CHAPTER 5.

General Provisions.

29. No Commissioner or member of a Ward Committee shall be personally liable for any contract made, or expense incurred by or on behalf of the Commissioners, but the funds, from time to time in the hands of the Commissioners, shall be liable for, and chargeable with, all contracts and expenses duly incurred as aforesaid. Every Commissioner or member of a Ward Committee shall be personally liable for any wilful misapplication of money entrusted to the Commissioners, to which he shall have been a party, and he shall be liable to be sued for the same.

30. No Commissioner or member of a Ward Committee, or servant of the Commissioners or Committee, shall be interested, directly or indirectly, in any contract made with the Commissioners. And if any such person be so interested, he shall thereby become incapable of continuing in office or employment, and shall be liable to a fine not exceeding five hundred Rupees. Provided always that no person by being a shareholder in, or member of, any incorporated or registered company, shall be disqualified from acting as a Commissioner or member of a Ward Committee by reason of any contract entered into between such company and the Commissioners. Nevertheless, it shall not be lawful for such shareholder or member to act as a Commissioner or member of a Ward Committee in any matter relating to any contract entered into between the Commissioners and such company.

PART III.—MUNICIPAL TAXATION.

CHAPTER 1.

Power of the Commissioners to impose Taxes, Duties, and Tolls.

31. It shall be lawful for the Commissioners of any Municipality, at a meeting to impose, within the limits of such Municipality, any one or more of the following taxes, duties, and tolls, at such rate as the Commissioners shall see fit, not exceeding the maximum in any case hereinafter mentioned and prescribed:—But no tax duty or toll imposed by the Commissioners under this section shall

be levied until the sanction of the Lieutenant-Governor shall have been obtained to such levy:—

(a)—An annual tax on persons residing in or owning property in the Municipality, according to the circumstances and the property to be protected of the persons liable to pay the same. Provided that no person who resides outside the limits of the Municipality shall be assessed according to his circumstances, but only in regard to the property which he possesses within the Municipality; and that the average annual tax on each holding shall not exceed Rs. 4 in Municipalities of the first class, and Rs. 2 in Municipalities of the second class.

(b)—A tax not exceeding 7½ per cent. on the annual value of houses, buildings, and lands situated within the limits of the Municipality exceeding Rs. 6 per annum, to be paid by the owners thereof.

(c)—A tax on carriages, horses, and elephants, kept or used within the limits of the Municipality; and a fee on the registration of carts and other vehicles.

(d)—A tax on trades and callings carried on and exercised within the said limits.

(e)—A tax on processions, and any public ceremonies not exclusively religious, and requiring the attention of the police, and performed within the said limits.

(f)—Duties on articles entering the limits of the Municipality, or dues on articles sold at markets or hāts, according to a table of rates sanctioned by the Lieutenant-Governor, and subject to such rules and exceptions as the Lieutenant-Governor shall direct.

(g)—Tolls on vehicles and beasts of burden entering the limits of the Municipality, according to a scale sanctioned by the Lieutenant-Governor; and tolls on ferries within the said limits.

CHAPTER 2.

Taxes on persons.

32. When it shall have been determined that an annual tax on persons according to their circumstances and property shall be imposed under this Act in any Municipality, the Commissioners or the Ward Committee shall prepare an assessment in respect thereof upon the several persons liable to be assessed within the Municipality or Ward for which such Commissioners or Committee shall be appointed, and shall prepare a list which shall specify every parcel of land, house, or other holding on account of the occupation of which any person is liable to be assessed, the name of the person liable to be assessed in respect of each such holding, the trade, business, or other description of such person, and the amount payable quarterly by such person. It shall be competent to the Commissioners or to a Ward Committee or to the Magistrate to omit from the list prepared under this section any person who may by them or him be deemed too poor to be assessed to the tax leviable under this Chapter.

33. The Commissioners or the Ward Committee shall, if the Commissioners so decide, instead of preparing a new assessment for any year, revise and amend the assessment then in force.

34. When any assessment shall have been prepared, or shall have been revised and amended by any Ward Committee, such Ward Committee shall forthwith forward to the Commissioners the list containing the same, and such Commissioners shall examine, and, if necessary, amend and settle it.

35. When an assessment shall have been prepared, or revised and amended directly by any Commissioners, and not by a Ward Committee, such Commissioners shall forward to the Magistrate a list containing the same, and the Magistrate shall examine, and, if necessary, amend and settle it.

36. When the assessment in any Municipality shall have been so made and settled as provided by the preceding sections, the Magistrate shall sign the list, and shall cause one copy thereof, together with a notification in the form in Schedule B to this Act annexed, or to the like effect, and written in the language of the province in which such Municipality is situate, to be put up in some conspicuous place therein or in the division thereof for which such assessment has been made; and a written copy of the said list to be deposited in his own office. So soon as the copies of the list shall have been so hung up and deposited, public proclamation shall be made throughout such Municipality by beat of a drum notifying that such copies have been so hung up and deposited, and that the copy so deposited in the Magistrate's office is open to inspection.

37. Unless and until revised and amended as herein is provided, every assessment, as settled under Section 34 or Section 35, shall be valid for three years, and until a new assessment shall be made. In case the occupant of any property included in any assessment shall be changed before a new assessment be made, the new occupant shall be liable in respect of such property for any portion of the amount so assessed which shall have become payable during his occupation; and after notification to such person, the Magistrate may cause his name to be substituted in the said list for the name of the former occupant.

38. Whenever the period for which any assessment is valid, as provided in Section 37 of this Act, shall be about to expire, notwithstanding anything hereinbefore contained, it shall be lawful for the Magistrate, instead of requiring any Commissioners or Ward Committee to prepare a new assessment, or to revise and amend the assessment then in force, to adopt the said assessment as the assessment for the year next following.

39. If no new assessment be made and published before the expiration of the first three months of any year, for which no assessment valid under the provisions of Section 37 shall be in force, the assessment which was in force at the close of the preceding year shall be deemed to be the assessment for the current year.

40. As soon as possible after an assessment shall have been adopted under Section 38, or shall have taken effect for the current year under the last preceding section, the Magistrate shall, in the manner provided in Section 36 for giving public notice that copies of the list of assessment have been hung up and deposited, give public notice that the assessment in force at the close of the preceding year will continue to have effect during the current year, but it shall not be necessary to hang up fresh copies of such list; and every person whose assessment may be so continued shall be at liberty to appeal against such assessment as if it were a new assessment made upon him.

41. Any person who shall have been assessed by any Commissioners, of whom the Magistrate has not been appointed a member, and who shall be dissatisfied with his assessment, or who shall dispute his occupation of any property, or his liability to be assessed, may appeal on unstamped paper to such Commissioners at a meeting; and in case such Commissioners shall not grant the prayer of such appeal, such Commissioners shall submit the decision of the matter to the Magistrate, and the Magistrate, after making such inquiries as he may deem necessary, by examination of the appellant on oath or solemn affirmation or otherwise, may confirm the assessment or amend the same. In case the Magistrate confirm the assessment, he may order that the appellant shall pay such reasonable costs as may have been incurred in the proceedings on his appeal. The decision of the Magistrate in such cases shall be final, and no objection shall be taken to any assessment, nor shall the liability of any person to be assessed be questioned in any other manner or by any other court. Provided that no appeal shall be received after the expiration of one month from the time of the notification of the assessment prescribed by Sections 36 or 40 or of the notification of the substitution of the name of an occupier under Section 37, unless the Magistrate, upon reasonable cause shown, shall extend the time for receiving such appeal.

42. Any person who shall have been assessed by Commissioners of whom the Magistrate has been appointed a member, and who shall be dissatisfied with his assessment, or who shall dispute his occupation of any property or his liability to be assessed, may apply to the Commissioners for a review of the assessment so far as regards himself; and with regard to such applications, the Commissioners at a meeting shall proceed as the Magistrate is directed to proceed in Section 41,

and the orders passed by the Commissioners on such application shall have the same effect and finality as orders passed by the Magistrate under the said section. Applications under this section to the Commissioners at a meeting shall be subject to the same limitation of time as appeals to the Magistrate under Section 41.

43. Any person who shall have been assessed by a Ward Committee, and who shall be dissatisfied with his assessment, or who shall dispute his occupation of any property or his liability to be assessed, may appeal to the Commissioners. And with regard to such appeals, the Commissioners at a meeting shall proceed as the Magistrate is directed to proceed in Section 41, and the orders passed by the Commissioners at a meeting on such appeals shall have the same effect and finality as orders passed by the Magistrate under the said section. Appeals to the Commissioners at a meeting shall be subject to the same limitation of time as appeals to the Magistrate under the said section.

44. It shall be lawful for the Magistrate at any time to require any Commissioners or Ward Committee, as the case may be, to make an assessment on account of the occupation of any house which may have been constructed, or any house or other holding which may have become liable to assessment after the general assessment which may then be in force shall have been made, or which may have been by mistake or accident omitted from such assessment. Notice of the amount assessed in accordance with such requisition shall be given to the person so assessed, who may appeal or apply against such assessment according to the provisions of Sections 41, 42, or 43, within one month after the service of such notice.

45. It shall be lawful for any person upon whom any assessment shall have been made, who shall, during the period for which such assessment is valid have ceased to occupy any property in respect to which he may have been assessed, or whose property to be protected, and circumstances may have changed during the period aforesaid, to apply on unstamped paper to the Commissioners; and in case such Commissioners shall not grant the prayer of such application, such Commissioners shall submit the decision of the matter to the Magistrate, and the Magistrate, after making such inquiries as he may deem necessary by examination of the applicant on oath or solemn affirmation, or otherwise, may amend the assessment of such applicant as to him shall appear just, or may confirm the same; and in case he shall confirm the said assessment, may order that the applicant shall pay such reasonable costs as may have been incurred by reason of such application. The decision of such Magistrate upon such application shall be final.

46. The Commissioner of the division, with the sanction of the Government, may at any time direct the Magistrate to revise, or to cause to be revised by the Commissioners or Ward Committee,

the assessment of any Municipality, specifying the reasons which, in his opinion, render such revision necessary, and the Magistrate shall, according to such direction, revise, and if necessary amend the same, or cause it to be revised and amended.

CHAPTER 3.

Taxes on houses.

47. When it shall be determined that — on the annual value of houses, buildings, and lands shall be imposed in any Municipality, such tax shall be paid by the owners of such houses, buildings, and lands by quarterly instalments, except as hereinafter provided.

48. The gross annual rent at which the houses, buildings, and lands liable to the tax may be reasonably expected to be let, shall be deemed to be the annual value of such houses, buildings, and lands, and such value shall accordingly be fixed by the Commissioners from year to year, commencing from the date on which this Act shall have come into operation.

49. Whenever any house or building belongs to one owner, and the ground on which the same stands, and which is usually occupied therewith, belongs to another, it shall be lawful for the Municipal Commissioners to assess such house or building and ground together at one consolidated rate. The amount so assessed shall be payable by the owner of the house or building, who shall thereafter be entitled to deduct from the rent which he pays for the ground, such proportion of the tax so paid by him as is equal to the proportion which his rent bears to the annual value of the whole property assessed.

50. If the sum due on account of any tax from the owner of any house, building or land remains unpaid after the notice of demand has been duly served, and such owner be not resident within the place, or the place of abode of such owner be unknown, the Municipal Commissioners may demand the amount from the occupier for the time being of such house, building, or land, and on non-payment thereof, may recover the same by distress and sale of any goods and chattels found on the premises, and whenever such tax shall be paid by or recovered from such occupier, he may deduct, from the next and following payments of his rent, the amount which may be so paid by or recovered from him. Provided that no arrear of rate, which has remained due from the owner of any house, building, or land for more than one year, shall be so recovered from the occupier thereof. Provided also that if the tax so deducted is a consolidated tax payable by the owner of a house or building under the next preceding section, the same shall, after such deduction, be deemed to have been paid by such

owner within the meaning of the last mentioned section.

51. The Commissioners shall, at a meeting to be held as soon as may be after their appointment, assess or determine the rate of such annual tax to be levied from the date on which this Act may come into operation till the expiration of the current year, and at a meeting not less than fifteen days before the expiration of each year, shall determine the rate of such tax for the ensuing year.

52. The Commissioners may require the respective owners or occupiers of the houses, buildings, and lands to furnish them with returns of the measurements and of the rent or annual value thereof, and they, or any person appointed by them for that purpose, at any time between sun-rise and sun-set, may enter, inspect and measure any such houses, buildings or lands, after having given forty-eight hours' previous notice of their intention to the occupier thereof. When the valuation of the houses, buildings, and lands, shall have been completed, the Commissioners shall cause lists containing the valuation and assessment to be made out, and shall give public notice thereof, and of the place where the lists or copies thereof may be inspected; and every person claiming to be the owner or occupier of property included in the assessment, or the agent of such person, shall be at liberty to inspect such lists, and to make extracts therefrom, without the payment of any fee.

53. The Commissioners shall at the same time give public notice of a day and hour, not being less than fifteen days from the publication of such notice, when they will proceed to revise the said valuation and assessment; and in all cases in which any property is for the first time valued, or the valuation is increased, shall give special notice thereof to the owners or occupiers of such property. All appeals against such valuation and assessment shall be made at or before the time fixed in the notice.

54. After the appeals have been inquired into, and after the revision of the valuation and assessment has been completed, the amendments made in the lists shall be authenticated by the signature of not less than three of the Commissioners, who shall at the same time certify under their signatures that no valid objection has been made to the valuation and assessment in the said lists, except in the cases in which amendments have been made as shown therein, and subject to such amendments as may thereafter be duly made, the tax so assessed shall be deemed to be the tax for the whole year for which the assessment shall be made. Provided always that the Chairman or Vice-Chairman may at any time amend the said lists by inserting therein the name of any person whose name ought to be so

inserted, or by inserting any property liable to the tax, after giving notice to such person as may be interested in the making of the amendment, of a day not being less than fifteen days from the date of the service of such notice, when such amendment is to be made, or by striking out any property not liable to the tax, or reducing the amount of the tax, without notice; and in all cases in which any property is inserted as liable to the tax, the amendment shall be considered to have been made at the expiration of fifteen days from the time when the person interested first received notice thereof; and any person interested in such amendment may appeal to the said Commissioners by application in writing left at their office three days before the day fixed in the notice of such amendment.

55. It shall not be necessary to prepare new lists, or to determine the rate of the tax every year, but the Commissioners may adopt the valuation and assessment contained in the lists for the preceding year (with such alteration as may in particular cases be deemed necessary), as the valuation and assessment for the year following. Provided that public notice of such valuation and assessment shall be given in the manner prescribed in Section 53 of this Act.

56. Appeals against any tax assessed under this Act shall be heard and determined by not less than three Commissioners and their adjudication, and the assessment by the Commissioners of any tax when no appeal is made as hereinbefore provided, shall be final; and no person shall contest any assessment in any other manner than by appeal as hereinbefore provided.

57. When any house shall have been vacant for sixty or more consecutive days during any year, the Commissioners shall remit so much of the tax of that year as may be proportionate to the number of days the said house may have remained unoccupied; provided that the owner of such house, or his agent, shall have given to the Commissioners notice in writing of the vacancy thereof, and that the amount of tax to be remitted shall be calculated from the date of the delivery of such notice.

CHAPTER 4.

Taxes on carriages and wheeled vehicles.

58. When it shall be determined that a tax on carriages, horses, and elephants shall be imposed in any Municipality, the Commissioners shall declare at what rates, not exceeding the rates given in Schedule (C) to this Act annexed, such tax shall be imposed on all carriages, horses, and elephants kept within the limits of such place; and thereupon such tax shall be payable quarterly. Provided that this section shall not apply to, or include, gun-carriages, or ordnance carts or wagons; cavalry horses or horses of the mounted police; horses belonging to officers

doing regimental duty, at the rate of one horse for each officer; vehicles, horses, or elephants belonging to the Government; vehicles and horses kept for sale, and not used for any other purpose, if kept by *bond fide* dealers.

59. Every person who may have owned or had charge of any carriage, horse, or elephant, kept within such place for any number of days in any quarter, shall be liable to the whole tax for that quarter; but if a carriage shall have been under repair for the whole quarter, no tax shall be leviable in respect of such carriage for that quarter.

Ownership for any number of days in a quarter creates liability to the tax for the whole quarter.

Exemption of carriages under repair.

60. Whenever the owner of the carriage, horse, or elephant, let out for hire, and kept for the time being in premises situated within any place shall not reside in such place, the sums to be charged for such carriage, horse, or elephant shall be recoverable from the person in whose premises it is for the time being kept.

Carriage, &c., let for hire within any defined place, although owned by persons not residing therein, liable to the tax.

61. The Commissioners at their discretion may compound, for any period not exceeding one year, with livery stable-keepers and other persons keeping carriages and horses for hire, for a certain sum to be paid for the carriages and horses so kept by such person, in lieu of the rates specified in the schedule.

Commissioners may compound with livery stable-keepers.

62. The Commissioners shall from time to time cause to be prepared and entered, in distinct columns, in a book to be kept by the Commissioners, and to be open to the inspection of any person interested therein, a list of the persons liable to the payment of the tax, a description of the carriages and animals in respect of which they are liable, and the amount of the tax thereon.

List of persons liable to tax to be prepared.

63. In order to enable the Commissioners to have such list prepared, the Commissioners, or any officer authorized by them, may send to all persons supposed to be liable to the payment of the tax, a schedule to be filled up with such information respecting the carriages and animals kept by them as the Commissioners may judge necessary for the assessment of the tax. The schedule shall be filled up in writing, and signed and dated and returned to the office of the Commissioners by every person to whom it is sent, whether or not liable to the payment of the tax.

Returns may be required for purpose of making list.

64. The Commissioners may summon any person supposed to be liable to the payment of the tax, or any servant of such person, and may examine such person or his servant as to the number and description of the carriages and animals in respect of which such person is liable to be assessed, and such person or his servant shall answer such questions as may be put to him by the Commissioners.

Power to summon persons liable to tax.

65. Any person who may dispute his liability to the payment of such tax, or the amount of any such assessment, may appeal to the Commissioners: provided that such appeal shall be commenced within ten days after the receipt by such person of a bill for the sum claimed from him in respect of such assessment.

Appeal against assessment may be made to Commissioners.

Proviso.

66. Appeals against any such assessment shall be heard and determined by not less than three Commissioners, and their adjudication upon every such appeal shall be final, and no person shall contest any assessment so made in any other manner than by appeal to the Commissioners as hereinbefore provided.

Commissioners' decision final.

Registration of wheeled vehicles.

67. It shall be lawful for the Commissioners of any Municipality at a meeting, with the sanction in writing of the Lieutenant-Governor first obtained, to declare and direct, by notification published in such manner as the Lieutenant-Governor may order, that every cart, hackery, and other wheeled vehicle without springs kept and used within, or let for hire within or without such place, and used within it, shall be registered by the Commissioners with the name and residence of the owner, and shall bear the number of registration in such manner as the said Commissioners shall direct. Provided that this section shall not apply to, or include carts, hackeries, or other such vehicles as aforesaid kept at more than two miles distance from the said place and used only temporarily or casually in the place, or to carts, hackeries, or other wheeled vehicles without springs, the property of Government or of the Commissioners.

Registration and number of hackeries, &c.

68. The registration of carts, hackeries, and other vehicles under the last preceding section shall be made, and the numbers assigned half-yearly, upon such days as the Commissioners shall notify, and such fee as they shall fix, not exceeding one rupee, shall be paid for each registration. Any person becoming possessed, between the first day of January and the first day of July, or between the first day of July and the first day of January of any such cart, hackery, or other vehicle which has not been registered for the then current half-year, shall, within a week of becoming so possessed, register the same, and the Commissioners shall grant registration in any such case, on payment of a fee for the unexpired portion of the current half-year, calculated at the rate of the fee to be fixed as aforesaid. When any registered cart, hackery, or other vehicle is transferred within any half-year it shall be registered anew in the name of the person to whom it has been transferred, and a fee not exceeding four annas shall be paid for every such last-mentioned registration.

Fee for registration.

69. Whoever owns or keeps any cart, hackery, or other wheeled vehicle without springs, required under the provisions of this Act to be registered, without having caused

Penalty for not registering a cart or hackery.

the same to be registered under the last preceding section, shall be liable, on conviction before a Magistrate, to a fine not exceeding three times the usual registration fee, and the Magistrate may seize and detain the vehicle. If the vehicle seized be not claimed, and the fine be not paid within ten days, such vehicle, together with the animals seized with it (if any), may be sold by auction by order of the Magistrate, and the proceeds applied to the payment of the fine, and to the costs and charges incurred on account of the seizure, detention, and sale, and the surplus (if any), if not claimed by the owner or the person keeping such cart, hackery, or other vehicle within a further period of twenty days, shall become vested in the Commissioners, and be employed for the purposes of this Act.

CHAPTER 5.

Taxes on trades and callings.

70. When it shall be determined that a tax on trades and callings shall be imposed in any town, such determination shall be notified, in such manner as the Lieutenant-Governor may direct, and from the 1st day of April next following such notification, every person who shall within the town exercise any of the professions, trades, or callings specified in Schedule (D) to this Act annexed shall take out a license, and shall pay for the same an annual fee not exceeding such sum as in the said schedule is mentioned. The table of fees leviable under this chapter shall be fixed from time to time by the Commissioners, subject to the confirmation of the Lieutenant-Governor.

71. Every license under the next preceding section shall be granted by the Commissioners, and to some person duly authorized by them in that behalf, and shall specify the date of the grant thereof, the true name of the person to whom the license is granted, and the sum paid for such license.

72. Every license shall have effect and continue in force from the day of the date thereof until the day hereinafter appointed for the expiration thereof; and every such license which shall be granted before the 1st day of January next following the notification shall expire on that day, and every such license which shall be granted upon or at any time after that day, shall expire on the 31st day of December next after the day of the granting thereof.

73. Every person to whom such license shall be granted, and who shall be desirous of continuing to exercise his profession, trade, or calling after the expiration thereof, shall take out a fresh license for that purpose for the following year, to expire on the day appointed in the last preceding section, and shall renew the same from year to year so long as he shall desire to continue such profession, trade, or calling.

74. The Chairman, or in a first class municipality a sub-committee of the Commissioners, shall determine under which of the classes mentioned in the Schedule (D) to this Act annexed every person to whom a license may be granted shall be assessed. The Commissioners at a meeting shall from time to time declare what are to be considered bazaars, hâts, or public markets, within the meaning of this Act.

75. As soon as may be after the first day of September in every year, the Chairman shall prepare a list of the persons licensed under this Act, which list shall state the profession, trade, or calling of each of the persons therein named, the class under which he is assessed, and the sum paid by him in respect of his license, and such list shall be filed in the office of the said Commissioners, and be open to public inspection at all reasonable times.

76. If at any time after three months have elapsed from the day of the date of the said notification, any person within the said limits shall exercise his profession, trade, or calling without having duly taken out a license as required by Section 69, he shall be liable, on conviction before a Magistrate, to a penalty not exceeding three times the amount which, in the judgment of such Magistrate, would have been payable by such person in respect of a license duly taken out as aforesaid.

77. Any person required by Section 69 to take out a license, who shall, without reasonable excuse, neglect or refuse to produce and show his license when required so to do by an officer duly empowered in writing by the Commissioners to make such requisition shall, on conviction before a Magistrate, be liable to a penalty not exceeding one hundred Rupees.

CHAPTER 6.

Taxes on processions, &c.

78. When it shall have been determined that a tax shall be levied in any Municipality on processions and any public ceremonies not exclusively religious, such determination shall be duly notified, and from the date of such notification no person shall organise or conduct a procession or public ceremony within the limits of such Municipality without first taking out a license from the Commissioners. Licenses under this section shall be granted at the following rates namely:—

	Rate of license.
License for a procession or ceremony whereat elephants are to be used, or fire-works are to be displayed, or guns fired	100 Rs. for each day.
License for a procession or ceremony whereat more than two hundred persons are to attend	50 " "
License for a procession or ceremony whereat more than fifty and not more than two hundred persons are to attend	10 " "
License for a procession at which less than fifty people are to attend	2 " "

79. Any person who may organize or conduct a procession within the limits of such Municipality without first obtaining a license, shall be liable, on conviction before a Magistrate, to a fine not exceeding three times the amount of the license fee payable in respect thereof under the next preceding section. Any police officer above the grade of constable may call upon the conductor or organizer of a procession to produce his license, and if the license be not produced, he shall report the circumstances to the Commissioners or to the Magistrate; but he shall not arrest any one or stop the procession, unless he is unable to ascertain the name and address of the organizer of the procession. In the case of processions connected with marriage or betrothal the nearest adult male relative, or the guardians of the bride and bridegroom, or of the betrothed parties, shall, unless the contrary be proved, be deemed to have organized or conducted the procession.

CHAPTER 7.

Duties on articles.

80. When it shall have been determined that duties shall be levied on articles entering within the limits of any Municipality, the Commissioners shall prepare and submit for the Lieutenant-Governor's approval a schedule of proposed rates for the levy of such duties, and shall prepare and submit as aforesaid bye-laws which shall provide for the collection and realization of such duties, for penalties for non-payment, and for exempting all through traffic from taxation, and for refunding the duty levied on duty-paid goods which are taken out of the municipal limits. It shall be lawful for the Lieutenant-Governor to modify and to approve such rates and bye-laws: provided that no duty shall be levied on any article at a rate exceeding two per centum on the average value of such article. The rates and bye-laws for any Municipality shall, when finally approved, be published in such Municipality in such manner as the Lieutenant-Governor may direct.

81. When it shall have been determined that market dues shall be levied upon the sale of goods at any periodical market within the limits of any Municipality, the Commissioners shall prepare and submit a schedule of rates for the levy of such dues, and shall prepare and submit bye-law for the collection and realization of such dues and for penalties for non-payment. It shall be lawful for the Lieutenant-Governor to modify and to approve such rates and bye-laws, provided that such dues shall in no case exceed one quarter of an anna in every rupee of the price for which such goods may be sold.

82. It shall be lawful for the Commissioners, with the sanction of the Lieutenant-Governor, to lease out for any term not exceeding three years, the collection of duties or dues under the two next preceding sections. Such lease shall be subject in all respects to the rates and bye-laws passed under the said sections.

CHAPTER 8.

Tolls.

83. When it shall have been determined that Municipal Funds shall be raised by tolls on ferries within the limits of a Muni-

cipality the Commissioners shall notify the ferry or ferries at which such tolls shall be levied; and shall also notify such rates of tolls as the Lieutenant-Governor may from time to time sanction. A table of tolls, written or printed, in the English and native languages, shall be hung up in some conspicuous place near every ferry so as to be easily read by all persons crossing at the ferries.

84. Every toll-keeper or ferry lessee who shall neglect to hang up and keep in good order and repair such table of tolls, or who shall wilfully remove, alter, or deface the same, or allow it to become illegible, shall be liable to a penalty not exceeding ten Rupees.

85. Every toll-keeper or ferry lessee who shall ask or take any toll other than the lawful toll, or who shall without due cause delay any passenger, cart, carriage, animal, or goods, shall be liable to a penalty not exceeding fifty Rupees.

86. Every person crossing at any such public ferry, who shall refuse to pay the toll, or who, with intent of avoiding payment thereof, shall fraudulently or forcibly pass by or through any toll-station without paying the toll, or who shall obstruct any toll-keeper or any of his assistants in any way in the execution of their duty under this Act; and every person who shall maliciously damage any toll-bar, boat, or any other thing employed in or about any public ferry, or who shall maliciously remove, alter, destroy, or damage any table of tolls hung up as hereinbefore directed, shall be liable to a penalty not exceeding fifty Rupees over and above the value of the damage, if any, which he has done.

87. The Commissioners may make rules, subject to confirmation by the Lieutenant-Governor, fixing the number of passengers, carts, carriages, and animals, and the quantity of goods that may be carried in any public ferry-boat at one trip, and for the safe and convenient carriage of passengers and property, and for keeping the ferry-boats in good order, and otherwise for the due discharge of their duty by all tindals, toll-keepers, and other persons employed at any public ferry: and any tindal, toll-keeper, or other person infringing or disobeying any such rule, shall be liable to a penalty not exceeding twenty Rupees, and also to make good any loss or damage caused thereby, the amount of which shall be summarily ascertained by the Magistrate, within whose jurisdiction the offence was committed, and such amount may be recovered as any penalty under this Act may be recovered.

88. Every person who shall convey for hire any passenger, animal, cart, carriage, or goods, across any arm of the sea, creek, or river within the provinces subject to the Lieutenant-Governor to any point or place on the opposite bank or coast within a distance of three miles on either sides above or below any public ferry, without the special license of the Magistrate of the district in which the ferry is situated, shall be liable to a penalty not exceeding fifty Rupees. Provided that nothing in

Penalty for organising procession without license.

Penalty for neglecting to put up a table of tolls.

Extortion or misconduct by toll-keeper.

Duties on articles entering Municipal limits.

Market dues on sale of goods.

Bye-laws for regulating ferry-boats, &c., to be made by Commissioners.

Power to lease the same.

Table of tolls.

Proviso.

this section shall subject to such penalty any person who shall specially let for hire his boat for the conveyance of any other person or his family or goods across any creek or arm of the sea within the said settlement.

89. The Commissioners may appoint at any ferry managed under this Act toll-keepers, and may collect the tolls through such toll-keepers, or they may grant a lease of any such ferry for any period not exceeding three years.

90. It shall be lawful for the Lieutenant-Governor to make over to the Commissioners any existing ferry within the limits of the Municipality, and such ferry shall thenceforward be subject to the provisions of this Act.

91. When it shall have been determined that tolls shall be levied on vehicles and beasts of burden entering any town, the Commissioners shall submit to the Lieutenant-Governor a table of rates and rules for the levy of such tolls; and the Lieutenant-Governor may modify or approve such tables and rules. The rules and rates, so modified or approved, shall not take effect until one month after they shall have been duly notified. Provided that the rates shall in no case exceed the rates laid down in Schedule (E) appended to this Act.

92. The tolls or rates determined as in the next preceding section shall be levied upon all carriages, carts, and animals entering the municipal limits; and the Commissioners may construct toll-bars, gates, and gate-keepers' stations, and may place the collection of such tolls under the management of such persons as may appear to them proper, or may lease out the same for any period not exceeding three years, and shall frame bye-laws in manner hereinafter provided for the guidance of such toll collectors; and all persons employed in the management and collection of such tolls shall be liable to the same responsibilities as would attach to them if employed in the collection of any assessment or tax under this Act. Provided that this section shall not apply to carriages, carts, and animals licensed or registered by the Commissioners: provided also that no more than one payment of toll shall be demanded for, and in respect of, any carriage, cart, or animal in any one period of twenty-four hours from midnight to midnight.

93. In case of non-payment of any such toll on demand, the officer appointed or duly authorized to collect the same may seize any carriage or animal on which it is chargeable, or any part of its burden of sufficient value to defray the toll. If any toll, together with the cost arising from such seizure and custody, remains undischarged for forty-eight hours, the Commissioners may sell the property seized for discharge of the toll, and of all expenses occasioned by such non-payment, seizure, custody, and sale. Any balance that may remain shall be returned, on demand, if made within twelve months, to the owner of the property, and

if unclaimed after such period, shall be credited to the Municipal Fund. After seizure of the property as aforesaid, the Commissioners shall forthwith issue a notice in writing that, after the expiration of two days, exclusive of Sunday, they will sell at such place as they may state in the notice the property by auction. Provided that if at any time before the sale has actually begun the person whose property has been seized shall tender to the Commissioners, or other officer appointed by them, the amount of all the expenses incurred and of the toll payable by him, the Commissioners shall forthwith release the property seized.

94. No tolls shall be paid for the passage of troops on their march, of troops, military stores, or of military or Government stores, or of military or police officers on duty, or of any person or property in their custody, or of conservancy carts or other such vehicles belonging to the Commissioners; but no other exemption from payment of the tolls levied under this Act shall be allowed.

95. It shall be lawful for the Commissioners to compound with persons living outside the Municipal limits for a sum to be paid annually or half-yearly, in lieu of all tolls payable under the provisions of this Act in respect of carriages, carts, or animals entering the municipal limits; and the Commissioners shall issue licenses for such carriages, carts, or animals; and while such licenses shall remain in force, such carriages, carts, and animals shall be exempt from all tolls as aforesaid upon entering the municipal limits. Provided always that such composition shall include all the carriages, carts, and animals possessed by the person compounding.

96. In all cases of resistance to the lawful authority of the toll-collectors, all police officers shall be bound to assist the toll collectors when required; and for that purpose shall have the same power which they have in the exercise of their ordinary police duties.

97. Every person other than persons appointed or duly authorized to collect the tolls under this Act, who shall levy or demand any toll, and also every person who shall unlawfully and extortionately demand or take any other or higher toll than the lawful toll, or under colour of this Act, seize or sell any property, knowing such seizure and sale to be unlawful, or in any manner unlawfully extort money or any valuable thing from any person under colour of this Act, shall be deemed to have committed the offence of cheating or extortion, as the case may be, and shall be liable to such punishment as is prescribed for those offences respectively by the Indian Penal Code.

98. A table of the tolls authorized to be taken at any toll-gate or station, legibly written or painted in English words and figures, and in the vernacular language or languages of the district, shall be put up in a conspicuous place near such gate or station.

PART IV.—MODE OF RECOVERY OF MUNICIPAL TAXES.

99. Every tax collector shall prepare from the lists hereinbefore mentioned a register which shall contain the names of all persons assessed, the property in respect of the occupation of which the assessment in each case is made, and the amount payable quarterly by each person in the Municipality or division, or portion of a Municipality in which the duties of such tax collector are to be performed; and every such list shall be attested by the Chairman.

100. Every tax to be payable under this Act shall be payable by four equal quarterly instalments. The instalment of tax on account of any quarter shall be due on the first day of the month in the said quarter.

101. When any sum is due on account of any tax leviable under this Act, the Chairman shall, unless otherwise specially provided in this Act, cause to be presented to the person liable to the payment thereof a bill for the amount, which shall also contain a statement of the period and a description of the property or thing for which the charge is made. If the bill be in respect of the tax upon carriages, horses, and elephants, it shall contain a notice of the time within which an appeal against such tax may be preferred.

102. For all sums collected on account of any tax under this Act, a receipt shall be given signed by the tax collector or by some other officer who may have been specially authorized by the Magistrate to grant such receipts.

103. The Tax Collector or other officer appointed on that behalf shall remit, in such manner and at such times as the Magistrate shall direct, all sums of money collected either by himself or by any one of his establishment, and the Magistrate, or some other officer authorized on that behalf, shall give the tax collector a receipt for every sum of money so remitted. The Magistrate shall also cause all such sums of money to be credited to the Municipal Fund.

104. If any bill which may have been presented in pursuance of this Act be not paid by the person liable to pay the same within ten days from the presentation thereof, the Magistrate may cause to be served upon such person a notice of demand in the Form (A) in Schedule F annexed to this Act, or to the like effect; and if such person shall not, within ten days from the service of notice of such demand, pay the sum due, together with a fee of two annas as costs for the service of the notice of demand, or show to the Magistrate sufficient cause for non-payment of the same, the amount of the arrear due, with costs on the scale in the Form (B) in Schedule F set forth, which shall include those of serving the notice of demand, may be levied by distress and sale of any goods and chattels belonging to the defaulter which may be found within the Municipality, or

of any goods and chattels whatever which may be found on the premises in respect of the occupation of which such defaulter is liable to such tax.

105. Every warrant of distraint and sale under the last preceding section shall be issued by the Magistrate, and shall be in the Form (C) in Schedule F set forth. The officer charged with the execution of the warrant of distress shall make an inventory of all goods and chattels seized under the Magistrate's warrant, and shall give not less than ten days' previous notice of the sale, and of the time and place thereof, by beat of drum, in the town or division thereof in which the property is situated and by serving on the defaulter a notice in the Form (D) in Schedule F. If the arrear be not paid with costs before the time fixed for the sale, or the warrant be not discharged or suspended by the Magistrate, the goods and chattels seized shall be sold by public outcry at the time and place specified, in the most public manner possible; and the proceeds shall be applied in discharge of the arrears and the costs, and the surplus, if any, shall be returned on demand to the person in possession of the goods and chattels at the time of the seizure. The tax collector or other officer appointed on that behalf under this Act shall make a return of all such sales to the Magistrate in the Form (E) specified in Schedule F; and the costs upon every such proceeding shall be such as are mentioned and set forth in Form (B) in Schedule F annexed to this Act.

106. If no sufficient goods or chattels belonging to a defaulter or being upon the premises in respect of the occupation of which the tax is due can be found within the Municipality in which the premises are situate, the Magistrate on being satisfied thereof, and of the existence of an arrear, may issue his warrant for the distress and sale of any goods and chattels belonging to the defaulter within any other part of the jurisdiction of the Magistrate, or for the distress and sale of any goods and chattels belonging to the defaulter within the jurisdiction of any other Magistrate whatsoever, and such other Magistrate shall back the warrant so issued, and cause it to be executed and the amount (if levied) to be remitted to the Magistrate issuing the warrant.

107. All goods and chattels, except tools or instruments of trade, which may be found upon any premises in respect of the occupation of which an arrear is due, shall be liable to be distrained for the recovery of such arrear. If the goods and chattels belong to any person other than the defaulter, the defaulter shall be liable to indemnify the owner of such goods and chattels from any damage he may sustain by reason of such distress or by reason of any payment he may make to avoid such distress or any sale under the same. Provided that no arrear of tax which has remained due for more than three calendar months shall be recovered by distress and sale of the goods and chattels of any person, other than the defaulter himself, who did not reside on the premises in respect of which such tax was imposed at the time when such arrear became due.

108. Every tax collector and other servants appointed for, or employed

No person employed in collection of tax to buy distrained goods.

in, the performance of any duties connected with the assessment or collection of the tax under this Act, is prohibited from bidding for or purchasing any property at such sales as aforesaid. Any person purchasing property in contravention of this section shall be liable, upon conviction before a Magistrate, to a penalty not exceeding fifty Rupees, and the sale shall be quashed and the property declared liable to resale.

109. The Magistrate shall cause a regular account to be kept of all distresses levied and sales made for the realization of arrears under this Act.

110. Whoever conceals, removes, or disposes of any property belonging to the person who is liable for any amount of tax, for the purpose of avoiding a distress under the provisions of this Act, shall be considered to have concealed, removed, or disposed of such property fraudulently.

PART V.—MUNICIPAL FUND AND ITS APPLICATION.

111. All monies, rents, and profits received by the Commissioners by virtue of this or any other Act, and all fines, fees, and penalties paid or levied under this Act, and all other monies which, under sanction of Government, may be transferred to such Commissioners, shall constitute a fund, which shall be called the Municipal Fund, and shall, together with all property of every nature or kind which may become vested in the said Commissioners, be under their control, and shall be held by them and their successors in trust for the purposes of this Act.

112. The Commissioners shall set apart annually out of the Municipal Fund a sum sufficient for the maintenance of police officers appointed or employed under Act V of 1861, or any other Act which may for the time being be in force for the regulation of the police within the territories subject to the Lieutenant-Governor of Bengal or any part thereof; provided that the number of police officers shall be determined in manner as hereinafter provided.

113. The Municipal Fund, after a sum has been set apart as in the manner provided by the next preceding section, may, subject to such rules and restrictions as the Lieutenant-Governor may from time to time prescribe, be applicable within the towns in which it is raised, to the following purposes, that is to say—

(1)—The construction, repair, and maintenance, of streets and bridges.

(2)—Works of public utility calculated to promote the health, comfort, or convenience of the townspeople; including the supply of water, expenses of lighting of streets, the construction, repair, and maintenance of hospitals, dispensaries, lunatic asylums, rest-houses, tanks, wells, and markets; also the payment of all charges connected with the objects for which such buildings were constructed, the training and employment of medical practitioners and vaccinators, the sanitary inspections, the registration of births and deaths, the cleansing of

tanks or wells, and the application of the Indian Contagious Diseases Act.

(3)—The diffusion of education, and with this view, the construction and repair of school-houses, the establishment and maintenance of schools either wholly or by means of grants-in-aid, the inspection of schools and training of teachers.

(4)—The support or relief of the poor in times of exceptional distress and scarcity.

114. It shall be competent to the Commissioners, with the sanction or upon the direction of the Lieutenant-Governor, to contribute a portion of the Municipal Funds towards the expenses incurred in any other Municipality under this Act, or in any district or sub-division under the District Road Cess Act 1871 passed by the Lieutenant-Governor of Bengal in Council, where such expenditure is incurred for any of the purposes described in the last preceding section, and is calculated to benefit the inhabitants of the contributing town, or to relieve exceptional distress in the neighbourhood; provided always that, where such contribution has not been originally recommended by the Commissioners, it shall not be obligatory upon them until the proposal to make such contribution shall have been submitted to them by the Lieutenant-Governor, and they shall have had the opportunity of offering their opinions thereon.

115. It shall be competent to the Lieutenant-Governor to appoint, from time to time, such officers as may be required for the purpose of inspecting or superintending the operations of the Municipalities created by this Act, and to assign to them such salaries as the Lieutenant-Governor shall think reasonable; and the expense incurred by reason of such appointments shall be defrayed in rateable proportions out of the funds of the several Municipalities established under this Act. And the said Lieutenant-Governor may direct that the municipalities in any district or division shall pay such sum as he may consider reasonable towards the cost of clerks or other establishment maintained in the office of the Collector or Commissioner for purposes of supervision under this Act.

116. The Commissioners shall consider and pass at a meeting, a statement or estimate showing the probable receipts, and the expenditure which it is proposed by the Commissioners to incur during the year commencing on the first day of April then next, and the items in respect of which it is proposed to incur such expenditure, and may also consider and pass a supplemental estimate providing for any modifications which they may deem it advisable to make in the distribution of the amount to be raised in the official year then current for the purposes of this Act.

117. Copies of the aggregate estimates for any Municipality which shall have been passed under the provisions of the next preceding Section, and if necessary, translations thereof into the vernacular of the district, shall be lodged in the offices of the Magistrate of the district and of the Magistrate, and at some convenient place within such Municipality. During fourteen days after such estimates shall have been so lodged in the said offices, of which due notice shall be

publicly given, such estimates and translations in the vernacular of the district shall be open to inspection at all reasonable times and seasons by any rate-payer of such town who may desire to inspect the same.

118. As soon as is practicable, after the expiration

Estimate to be transmitted to Magistrate of district and Commissioner of Division.

of the said fourteen days, the Magistrate shall transmit to the Magistrate of the district the said estimates, with any remarks or objections thereupon which may have been recorded by himself or by the Municipal Commissioners at a meeting. The Magistrate of the district shall transmit to the Commissioner of the Division the said estimates, together with any remarks or objections made by the Magistrate or the Municipal Commissioners, and his own opinion thereon.

119. The Commissioner of the division

Power of Commissioner of division as to estimates.

shall sanction, if unobjectionable, any estimate forwarded under the next preceding section. If he see any objection to such estimate he may record his objection: and he shall have power to remit for reconsideration the estimate of any Municipality made under this Part which may have been voted by less than two-thirds of the Commissioners of such Municipality.

120. The Commissioners shall, at such time

An annual report of proceedings, &c., to be submitted.

or times, and in such form as the Lieutenant-Governor shall direct, furnish an annual report of their proceedings and statements in detail of all the works executed by them, and of all sums received and expended by them. All the municipal accounts shall be audited by such person and in such manner as the Lieutenant Governor shall direct. The annual report shall be published in the *Calcutta Gazette*.

121. All sums collected under this Act, and

Disposal of sums collected.

all funds appropriated by Government for the purposes of this Act, shall be paid into the nearest Government treasury of the district, or, with the sanction of Government, into any Bank or branch Bank, or Native Banker established in or near to the Municipality, and shall be credited to an account to be called the Municipal Fund of the Municipality where they have been raised, provided always that it shall be competent to the Commissioners, with the sanction of Government, to invest any sums not required for immediate use either in the Government Savings Bank or in Government securities, or in any other form of security which may be approved of by Government.

122. All orders for payment of money from

Mode of drawing money.

the Municipal Fund shall be signed by the Chairman or, in his absence, by the Vice-Chairman, or, in the absence of the Vice-Chairman, by any two of the Commissioners.

123. Within one month after the commence-

Accounts to be prepared.

ment of each year, the Magistrate shall cause to be prepared accounts of the receipts and expenditure of the Municipal Fund during the previous year; and shall cause such accounts to be laid before the

Municipal Commissioners for the space of one month, and shall cause copies of such accounts and of any remarks made thereon by the Municipal Commissioners to be forwarded to the Magistrate of the district, who shall forward the same to the Commissioner of the Division.

PART VI.—REGISTRATION OF BIRTHS AND DEATH.

124. It shall be lawful for the Commis-

Commissioners may keep a register of births and deaths, and appoint Registrars.

sioners to keep in their office a register of all births and deaths within the Municipality, and for this purpose they shall divide the Municipality into such and so many districts as they shall think fit, and for every such district they shall appoint a person to be Registrar of births and deaths within such district.

125. Every Registrar shall dwell within

Every Registrar to live in his district; list of Registrars to be published, &c.

the district of which he is Registrar, and shall cause his name, with the addition of Registrar for the district for which he shall be so appointed, to be placed in some conspicuous place on or near the outer door of his own dwelling-house; and the Commissioners shall cause to be printed and published a list, containing the name and place of abode of every Registrar in the town.

126. The Commissioners shall cause to be

Commissioners to have register books prepared and numbered.

prepared and printed a sufficient number of register books for making entries of all births and deaths which may take place within the Municipality according to the forms prescribed in Schedules (G) and (H) to this Act annexed, and the pages of such book shall be numbered progressively from the beginning to the end.

127. Every Registrar shall inform himself

Registrar to inform himself of, and register births and deaths.

carefully of every birth and of every death which shall happen in his district after the first day of September, and shall learn and register, as soon as conveniently may be after the event, without fee or reward, the particulars required to be registered, according to the forms in the said Schedules (G) and (H), respectively, touching every such birth and every such death, as the case may be, which shall not have been already registered, every such entry being made in order from the beginning to the end of the book.

128. The father or mother of every child born

Information of births to be given within one month.

within the Municipality, or in case of the death, illness, absence, or inability of the father and mother, the occupier of the house or tenement in which such child shall have been born, shall, within one month next after the day of every such birth, give information to the Registrar of the district, according to the best of his or her knowledge and belief, of the several particulars hereby required to be known and registered touching the birth of such child. Any person whose duty it shall be to give information to a Registrar under this section, who shall refuse or neglect to give such information, shall be liable to a penalty not exceeding one hundred Rupees.

129. Some one of the persons present at the death, or in attendance during the last illness, of every person dying within the Municipality, or, in case of the death, illness, inability, or default of all such persons, the occupier of the house or tenement, or if the occupier be the person who shall have died, some inmate of the house or tenement in which such death shall have happened, shall, within eight days next after the day of such death, give information to the Registrar of the district, according to the best of his or her knowledge and belief, of the several particulars hereby required to be known and registered touching the death of such person. Any person who shall refuse or neglect to give any information which it is his duty to give under this section, shall be liable to a penalty not exceeding one hundred Rupees.

130. Every person by whom the information contained in any register of births or deaths under this Act shall have been given, shall sign in the register his name, description, and place of abode; and no such registration shall be deemed to be complete or of any effect until such person shall have so signed it.

PART VII.—MUNICIPAL POLICE.

131. At such time or times, and in such form as the Lieutenant-Governor shall direct, the Commissioners at a meeting shall prepare a statement of the police force required for their Municipality, and such statement, when passed at a meeting of the Commissioners shall be forwarded to the Lieutenant-Governor through the Magistrate to the Commissioner of the division, who shall either himself sanction or amend the statement, or shall forward it to the Lieutenant-Governor for sanction or amendment, according as the said Lieutenant-Governor may, in each case from time to time, direct who shall sanction or amend such statement. The police force, according to the statement finally approved by the Lieutenant-Governor, shall be the police force of the Municipality for the year next ensuing, and its cost shall be incorporated on the estimates of expenditure to be prepared under this Act.

132. When the strength and the cost and distribution of the police of any Municipality shall have been settled under the next foregoing section, no alteration shall be made in such strength or cost or distribution of costs, save on the recommendation of the Commissioners and with the sanction of the Lieutenant-Governor of Bengal, or of the Commissioner of the division in cases where the Lieutenant-Governor may have delegated to the Commissioner powers under this section.

133. The Commissioners or a sub-committee of the Commissioners nominated for that purpose shall control, appoint, and dismiss or suspend the members of the town police force; provided that no police officer above the rank of constable shall be dismissed or suspended without the sanction of the magistrate of the district; and provided that all the acts of a sub-committee under this section shall be liable to revision by the Commissioners at a meeting.

134. No police officer, who forms part of the strength of the Municipal police, shall be liable to serve beyond the limits of the Municipality, save in execution of duties imposed on him by his employment as a police officer of such Municipality.

135. As soon as possible after the close of each month the District Superintendent of Police shall, as regards each Municipality, present to the Magistrate, in whose jurisdiction such Municipality may be situated, a bill showing the actual expenses incurred during the preceding month in the payment of the said force, and the contingent expenses thereof; and the said Magistrate, on being satisfied that the bill is substantially in accordance with the estimate for such town, shall cause the amount of such bill to be paid to the District Superintendent from the Municipal Fund.

136. The total amount which shall be chargeable to the Municipal Fund for the cost of any police force which may be sanctioned by the Government for employment within any town, including the contingent expenses of such force, shall not exceed the average rate of one rupee and eight annas per annum for each house in such town, provided that the number of police officers appointed shall not be greater than one superior officer for every fifteen constables, and one constable for every fifty houses.

PART VIII.—INTERVENTION BY THE GOVERNMENT.

137. If the Commissioners of any Municipality fail to effect the necessary repairs and maintenance of roads, or to pay for the police of the town, it shall be lawful for the Commissioner of the Division in which such Municipality is situated to convene a Committee, consisting of the district sub-divisional Magistrate, the executive engineer of the division, the civil surgeon, and two members nominated by the said Commissioner; and such Committee shall inquire into and report upon the state of such Municipality. And the Lieutenant-Governor may on the report of such Committee call upon the Commissioners, by requisition in writing signed by him and published in the *Calcutta Gazette*, to raise the necessary funds and carry out the purposes of this Act, and thereupon if the Commissioners neglect for the space of three months then next ensuing to comply with the said requisition, the Lieutenant-Governor may direct the Magistrate to raise the necessary funds under the provisions of this Act and carry out in all respects the purposes thereof.

138. When it shall appear to the Lieutenant-Governor in regard to any first class Municipality, or to such officer as he may delegate authority under this section in regard to any second class Municipality, either that due provision is not made for the construction and maintenance in the municipal limits of any district road passing through such limits, and that hinderance to the traffic of the country is caused thereby, or that reasonable elementary education is not available at a fair cost for children of the residents, it shall be lawful for

the Lieutenant-Governor, or such delegated officer as aforesaid, to call upon the Commissioners to repair or maintain such roads, or to provide such means of elementary education as may seem to the Lieutenant-Governor fit; and in case they shall not within three months make due provision for the same, to authorize the Magistrate to collect and apply to these purposes any of the municipal taxes hereinbefore authorized to be imposed.

139. It shall be lawful for the Lieutenant-Governor to direct the Commissioners of any Municipality to contribute the whole or a part of the cost of any elementary school established within such municipality, provided that in no case shall the contribution made under this section for any one year exceed one-sixth part of the balance of the Municipal Fund available, after the cost of police has been met, for carrying out the purposes of this Act. An elementary school shall be deemed to be a vernacular school or a school with a vernacular department, provided that the fee for each vernacular scholar at such school be not more than one anna per month.

PART IX.—MUNICIPAL REGULATIONS.

CHAPTER I.

Duties of Commissioners, &c.

140. The provisions of this and the next succeeding Part shall not have force in any Municipality until they shall have been specially extended thereto, and it shall be lawful for the Lieutenant-Governor of Bengal to extend any or all of the sections in this Part to any Municipality created under this Act, and the said Lieutenant-Governor shall have power to withdraw any Municipality from the operation of all or any of the sections of this Part.

141. The Commissioners may cause a name to be given to any road and affixed in such place or places as they may think fit, and may also cause a number to be affixed to every house in every road for the purpose of identifying such house; and the Commissioners at a meeting may cause such names and numbers to be altered.

142. The Commissioners shall provide all cattle, carts, and implements required for the removal of night-soil, dung, and other filth, and shall, from time to time, appoint or provide places convenient for the deposit of such night-soil, dung, and other filth, and for keeping all cattle, carts, and implements, required for the removal thereof, and for other purposes of conservancy.

143. It shall be the duty of the occupier of every house within the limits of any Municipality to remove from his premises all night-soil, dung, and other filth into carts provided by the Commissioners for the purpose of carrying away the same, and at such times and in such manner as the Commissioners may direct. Provided that of the occupier of any house shall prefer to carry

away the said night-soil, dung, or other filth, it shall be open to him to do so in conformity with the provisions of Section 146 of this Act.

144. All dirt, ashes, rubbish, sewage, soil, dung, and filth, collected by the Commissioners from the roads, houses, privies, sewers, and cess-pools, shall be held to be the property of the said Commissioners, who shall have power to sell and dispose of the same; and the money arising from the sale thereof shall form part of the Municipal Fund.

145. The Commissioners may cause any number of movable or fixed dust boxes, or other convenient receptacles wherein dust and rubbish may be temporarily deposited until removed and carried away, to be provided and placed in convenient situations, and may require the occupiers of houses in roads to cause all such matter as aforesaid to be deposited daily, or otherwise periodically, in the said receptacles.

146. The Commissioners shall from time to time fix the hours within which it shall be lawful to remove night-soil or other such offensive matter, and the manner in which such night-soil or other offensive matter shall be removed.

147. The Commissioners, or any officer appointed by them for that purpose, may inspect all privies, drains, and cess-pools within any Municipality at any time between sunrise and sun-set, after six hours' notice in writing to the occupier of any premises in which such privies, drains, or cess-pools are situated, and may, if necessary, cause the ground to be opened where they or he think fit for the purpose of preventing or removing any nuisance arising from such privies, drains, or cess-pools.

148. All public streams, channels, water-courses, tanks, reservoirs, springs, and wells in any town shall, for the purposes of this Act, be under the direction and control of the Commissioners.

149. The Commissioners shall have power to set apart a sufficient number of convenient tanks, or parts of rivers, streams, or channels, not being private property, for the inhabitants to bathe in, and also to set apart tanks or other places for washing animals or clothes, or for any other purpose connected with the health, cleanliness, or comfort of the inhabitants.

150. It shall be lawful for the Commissioners to require, by notice in writing, the owner of any premises to cleanse any private tank, and to drain off and remove any waste or stagnant water within any such premises which may appear to be injurious to health or offensive to the neighbourhood; and if such owner refuse or neglect to comply with such requisition during eight days from the service thereof, the Commissioners, their officers, and workmen, may enter such premises, and do all such necessary acts for all or any of the purposes aforesaid as they shall think fit; and the expense incurred thereby shall be paid by the

owner of such premises so making default, and shall be recoverable as a debt due to the Commissioners.

151. Whenever any lands or premises being private property or within any private enclosure, appear to the Commissioners to be, by reason of thick or noxious vegetation or want of drainage, in a state injurious to health or offensive to the neighbourhood, it shall be lawful for the Commissioners to require, by notice in writing, the owner or occupier of the premises to clear and remove such vegetation or drain such premises, and if he do not within one week after such notice begin to cut, clear, and remove such vegetation, or to drain such land, and do not complete such work with the due diligence, the Commissioners, their officers and workmen, may after forty-eight hours' notice, enter into the said premises, and do all necessary acts for the purpose aforesaid as they shall think fit, and the expense incurred thereby shall be paid by the owner or occupier of such premises, and shall be recoverable as a debt due to the Commissioners.

152. The Commissioners may, from time to time, as they see fit, drain off into any sewers, and cleanse and fill up or otherwise abate, any stagnant pool, ditch, tank, pond, or other receptacle of water (the same not being within any private enclosure) which shall appear to them to be useless or unnecessary, or likely to prove injurious to the health of the inhabitants, whether the same be the private property of any person or not.

CHAPTER 2.

Penalties.

153. Whoever wilfully removes, obliterates, or destroys any name or number affixed under section 141 of this Act, or under the provisions of any Act hereby repealed, shall be liable on conviction by a Magistrate to a fine not exceeding Rs. 20.

154. Whoever commits any nuisance, or deposits, or permits his servants to deposit any dust, dirt, dung, ashes, garden, kitchen, or stable refuse or filth of any kind, or any animal matter, or any broken glass or earthenware, broken brick, mortar, or other rubbish, in any road or on the pavement or verandah of any house, or on any ground between the house and the road, or any public quay, jetty, or landing place, or on any part of a river bank, whether above or below high water-mark, except in such places and in such manner and at such hours as shall be fixed by the Commissioners, shall be liable to a penalty not exceeding ten Rupees for each offence.

155. Whoever causes or allows the water of any sink or sewer, or any other offensive liquid matter, belonging to him or being on his land, to run, drain, or be thrown or put upon any road or public highway; or causes or allows any offensive matter from any sewer or privy to run, drain, or be thrown into a surface drain in any such road or highway, shall be liable to a fine not exceeding ten Rupees.

156. Whoever, being the occupier of a house within the limits of any Municipality, keeps or allows to be kept for more than twenty-four hours, or otherwise than in some proper receptacle, any dirt, dung, night-soil, filth, or any noxious or offensive matter, in or upon the roof of such house, or in or upon the roof of any out-house, or in any yard or ground attached to, and occupied by the occupier of such house, shall be liable to a penalty not exceeding ten Rupees for each offence.

157. Whoever, being the owner or occupier of any house, building, or land within any Municipality, whether tenanted or otherwise, suffers the same to be in a filthy or unwholesome state, shall be liable to a penalty not exceeding ten Rupees, and to a further penalty not exceeding ten Rupees for every day after conviction for such offence during which the offence is continued.

158. It shall also be lawful for the Commissioners to grant to such persons and for such period as they think fit, licenses to keep privies for public accommodation, subject to such conditions as may be necessary for the preservation of public health and decency. Any such person holding such license, and failing to observe the conditions prescribed in such license, shall be liable to a fine not exceeding fifty Rupees. Provided that it shall be lawful for the Commissioners, at any time, on giving one month's notice in writing, to cancel any license granted under this section.

159. Whoever throws or puts, or permits his servants to throw or put any earth, dirt, or other filth, rubbish, or night-soil into any sewer not specially appropriated for such purpose by the Commissioners, shall be liable to a penalty not exceeding ten Rupees for each offence.

160. Whoever, except as permitted by the Commissioners, bathes in any public stream, channel, water-course, tank, reservoir, spring, or well, or in any other manner fouls the water thereof, shall be liable to a fine not exceeding ten Rupees for each offence.

161. Whoever being the owner or keeper of any cattle, sheep, or pigs, suffers the stall, pen, or place in which they are kept, in or near any road or public highway, to be in a filthy or noxious state, or neglects to employ proper means to remove the filth therefrom, shall be liable to a fine not exceeding twenty Rupees, and to a fine not exceeding three Rupees for every day after conviction for such offences during which the offence is continued.

CHAPTER 3.

Conservancy works.

162. The Commissioners shall provide and maintain, in sufficient numbers and in proper situations, common privies and urinals, and shall cause the same to be kept in proper order and to be daily cleansed.

163. It shall be lawful for the Commissioners to prescribe the form or construction of privy which the owner or occupier of any house or building within the limits of the Municipality may have on his premises; and such owner or occupier shall have such privy shut out by a wall or fence from the view of persons passing by or residing in the neighbourhood; and any such owner or occupier having a privy constructed in a form different from that prescribed by the Commissioners, or failing to shut it out from public view in the manner hereinbefore directed, shall be liable to a fine not exceeding ten Rupees, and to a further fine not exceeding ten Rupees a day for each day of default or breach of the provisions of this section after written notice duly given by the Commissioners to such owner or occupier.

164. All public sewers, drains, and other works for conservancy existing in any Municipality at the time this Act comes into operation, or which may afterwards be made, shall be under the direction and control of the Commissioners.

165. All public sewers, or other works for the improvement, or the conservancy hereafter required in any Municipality shall be constructed under the direction of the Commissioners, who shall be empowered to purchase any land necessary for such purpose from funds at their disposal; or such land shall, if necessary, be taken under the sanction of Government, under the provisions of any Act heretofore passed, or which shall hereafter be passed, for the acquisition of land for public purposes.

166. All branch drains, and all privies and cess-pools within any town, shall be under the survey and control of the Commissioners, and shall be repaired and made efficient at the cost of the owners of the lands and buildings to which the same belong. If any such owner neglect, during eight days after notice in writing, to repair and make the same efficient in such manner as may be required by the Commissioners, the Commissioners shall cause such drain, privy, or cess-pool to be made efficient, or, if necessary, removed, and the expense of such removal or repair shall be paid by the owner or occupier so making default, and shall be recoverable as a debt due to the Commissioners.

167. If any such drain, privy, or cess-pool is constructed, after the passing of this Act, contrary to the directions and regulations of the Commissioners, or contrary to the provisions of this Act, or if any person, without the consent of the Commissioners, constructs, re-builds, or unstops any drain, privy, or cess-pool, which has been ordered by them to be demolished or stopped up, or not to be made, every person so doing shall be liable to a penalty not exceeding fifty Rupees. And the Commissioners may cause such drain, privy, or cess-pool to be removed, or may cause such amendment or alteration to be made therein as they think fit; and the expense thereof shall be paid by the person by whom such drain, privy, or cess-pool was improperly constructed, re-built, or unstopped, and shall be recoverable as a debt due to the Commissioners.

CHAPTER 4.

Obstructions in the road.

168. Whoever builds any wall or erects or sets up any fence, rail, post or other obstruction or encroachment, in any road or public highway, or in or over any open drain, sewer, or aqueduct along the side of any such road or highway, shall be liable to a fine not exceeding one hundred Rupees: and the Commissioners shall have power to remove any such obstruction or encroachment; and the expense of such removal shall be paid by the person erecting the same, and shall be recoverable as a debt due to the Commissioners.

169. Whoever displaces, takes up, or makes any alteration in the pavement or other materials, or in the fences or posts of any road or public highway, without the consent in writing of the Commissioners, or without other lawful authority, shall be liable to a fine not exceeding fifty Rupees.

170. The Commissioners may give notice in writing to the owner or occupier of any house or building as aforesaid, to remove or alter any projection, encroachment, or obstruction, which after this Act shall have taken effect, shall be erected or placed against or in front of such house or building, if the same overhangs, or juts into, or in any way projects or encroaches upon, or is an obstruction to the safe and convenient passage along any road or public highway, or obstructs, or projects or encroaches into or upon, any uncovered aqueduct, drain, or sewer in such road or highway; and such owner or occupier shall, within fourteen days after the service of such notice upon him, remove such projection, encroachment, or obstruction, or alter the same in such manner as shall have been directed by the Commissioners, and in default thereof shall be liable to a fine not exceeding two hundred Rupees; and the Commissioners in such case may remove or alter such projection, encroachment, or obstruction; and the expense of such removal or alteration shall be paid by the owner or occupier so making default, and shall be recoverable as a debt due to the Commissioners.

171. The Commissioners may cause any such projection, encroachment, or obstruction erected or placed against or in front of any house or building in any road or public highway before this Act shall have been extended to the place, to be removed or altered as they shall think fit; provided that notice be given of such intended removal or alteration to the occupier of the house or building against, or in front of which such projection, encroachment, or obstruction shall be, thirty days before such alteration or removal is begun; and they shall make reasonable compensation to every person who suffers damage by such removal or alteration.

172. Whenever any house or building, part of which projects beyond the regular line of a road or public highway or beyond the front of the house or building on either

side thereof, shall be taken down in order to be re-built or altered, the Commissioners may require the same to be set back to, or towards the line of the road or highway, or the line of the adjoining houses or buildings, and shall make reasonable compensation to the owner of such house or building for any damage he may thereby sustain.

173. The Commissioners may give notice to the owner or occupier of any land to cut and trim any hedges or trees which overhang any road or public highway, so as to obstruct the passage; and in the event of such notice not being complied with within eight days from the date of service thereof, the Commissioners may cause the said hedges or trees to be cut and trimmed in the manner required; and the expense incurred by the Commissioners in respect thereof shall be paid by the owner or occupier, and shall be recoverable as a debt due to the Commissioners.

174. It shall be lawful for the Commissioners, by a by-law to be made in manner hereinafter provided, to direct that the external roof and walls of huts or other buildings about to be erected or renewed in or near any road or public highway shall not be made of grass, leaves, mats, or other such inflammable materials.

175. No person intending to build or take down, alter, or repair any building, shall deposit any building materials or make a hole in or near any public highway, without the permission of the Commissioners, and when such permission is granted to any person, he shall, at his own expense, cause such materials or such hole to be sufficiently fenced and enclosed until the materials are removed, or the hole is filled up or otherwise made secure; and shall cause the same to be sufficiently lighted during the night: and whoever so deposits materials or so makes a hole without such permission, or fails to fence or enclose and cause to be lighted such materials or hole, or remove such materials or fill up or otherwise make secure such hole when the permission has been withdrawn, shall be liable to a fine not exceeding fifty Rupees, and a further fine not exceeding fifty Rupees for every day while the offence is continued after twenty-four hours' notice from the Commissioners.

176. If any house or other building, tank, well, or hole or other place, whether on public or private ground be, for want of sufficient repair or protection, dangerous to human beings, the Commissioners shall cause notice in writing to be given to the owner, if he be known and resident within the limits of their jurisdiction, and also to the occupier of the premises, if any, and shall also cause notice to be put on some conspicuous part of such premises, requiring the owner, or occupier, if any, forthwith to take down, secure, repair, or protect such building, tank, well, or hole, or other dangerous place; and if such owner or occupier do not, within three days after such notice, begin to comply with the requisition, and do not carry on the work to the satisfaction of the Commissioners, they may

cause the same to be taken down, secured, repaired, or protected, so as to prevent danger therefrom; and the expense of such work shall be paid by the owner or occupier of such property so making default, and shall be recoverable as a debt due to the Commissioners.

177. If, in any road any house, building or wall, or anything affixed thereon, be deemed by the Commissioners to be in a ruinous state or likely to fall, or in any way dangerous, they shall forthwith give notice in writing to the owner, if he be known and resident within the limits of their jurisdiction, and also to the occupier thereof, if any, requiring such owner or occupier to take down or secure the same within a fixed time; and in default the Commissioners shall cause such repairs to be made or such buildings to be removed; and the expense thereby incurred shall be paid by the owner of the premises so making default, and shall be recoverable as a debt due to the Commissioners.

178. Whenever, under the provisions of this Act, any work is required by the Commissioners to be executed, or any alterations or improvements to be made in any building, premises, or place, and such work, alterations, or improvements are executed by the occupier of such house, place, or premises, or by the Commissioners, at his expense, the cost thereof may be deducted by such occupier from the next and following payments of his rent due or becoming due to such owner, or may be recovered by him in any court of competent jurisdiction. Provided always, that in case the occupier has a beneficial interest in such building, premises, or place, he shall deduct or recover such sum only as will bear the same proportion to the entire cost of such work, alteration, or improvement, as the value of the owner's interest bears to the value of the joint interest of him and the occupier. And provided also, that in case the rents issuing out of any such building, premises, or place belong to more persons than one, who are entitled to the same, either as being joint proprietors of such building, premises, or place, or as having intermediate and other interests therein, the cost of any work, alteration, or improvement as aforesaid payable by the owner, shall be borne by such persons in proportion to their respective interests, and any one or more of such persons, who may have been compelled to pay more than a just proportion in the first instance, shall have like remedies against the others, for enforcing contribution by them, as are hereby given to the occupier as against the owner.

179. The materials of any such house, building, wall, or other structure or any part of the same which may be pulled down as provided in Section 176, may be sold by the Commissioners, and the proceeds of such sale applied to the payment of the expenses incurred. Any overplus of such sale shall on demand be restored to the owner of such house, building, or wall, and if unclaimed shall, after the lapse of twelve months, be carried to the credit of the Municipal Fund.

CHAPTER 5.

Regulation of certain offensive trades and of Burial and Burning Grounds.

180. Within such limits as may for the purposes of this section be fixed by the Commissioners, no premises shall be newly used except under license from the Commissioners, for any of the following purposes, namely, for melting tallow, for boiling offal or blood, or as a soap house, oil-boiling house, dyeing house, tannery, brick pottery or lime kiln, or other manufactory or place of business from which offensive or unwholesome smells arise, or as a yard or depôt for hay, straw, wood, or coal; and whoever without a license uses any such premises for such purpose, shall be liable to a fine not exceeding two hundred Rupees, and a fine not exceeding fifty Rupees for every day after the conviction for such offence, during which the said offence is continued.

181. No burial or burning ground, whether public or private, shall be made or formed after the passing of this Act, otherwise than by or under the authority of the Lieutenant-Governor of Bengal, without a license from the Commissioners; and whoever shall bury or burn, or cause, permit, or suffer to be buried or burned, any corpse in any burial or burning ground made or formed without such license, shall be liable to a fine not exceeding two hundred Rupees.

182. If, upon the evidence of competent persons, it shall appear to the Commissioners that any burial or burning ground is in such a state as to be dangerous to the health of persons living in the neighbourhood thereof, and also that a suitable place for interment or burning, as the case may be, exists within a convenient distance and is available, the Commissioners, with the sanction of the Lieutenant-Governor of Bengal previously obtained, may, by notification to be affixed on some conspicuous part of the ground, appoint a time, not being less than two months, for the closing of such burial or burning ground, and whoever, after the time so appointed, buries or burns, or causes or permits to be buried or burned, any corpse therein, shall be liable to a fine not exceeding one hundred Rupees.

CHAPTER 6.

Vaccination and Inoculation.

183. In any Municipality where the Lieutenant-Governor may consider that proper and sufficient arrangements have been made for the vaccination or inoculation with the cow-pox of the inhabitants thereof, the practice of inoculation shall be prohibited with effect from such date as may be notified by the Lieutenant-Governor at the time of the extension of this Chapter to such Municipality.

184. Any person who shall thereafter produce, or attempt to produce, in any person, by inoculation with variolous matter, or by wilful exposure to variolous matter, or to any matter, article, or thing im-

pregnated with variolous matter, or who shall wilfully, by any other means whatsoever, produce the disease of small-pox in any person, shall be liable, on conviction before a Magistrate, to imprisonment of either description for a period not exceeding three months, or to a fine not exceeding two hundred Rupees, or to both.

185. If any person having been inoculated with the small-pox in a place to which the provisions of this Act shall not at the time be applicable, shall afterwards enter the town of Calcutta, or any other town or place to which such provision shall then be applicable, before the elapse of forty days from the date of such inoculation, or without a certificate from a qualified medical officer, stating that such person is no longer likely to cause contagion, such person shall be liable, on conviction before a Magistrate, to imprisonment of either description for a period not exceeding three months, or to a fine not exceeding two hundred Rupees, or to both.

186. Whenever a Magistrate shall sentence an offender to fine under this Chapter, it shall be lawful for such Magistrate to award any portion not exceeding one-half of such fine to the person on whose information such offender has been convicted.

PART X.—MUNICIPAL MARKETS.

187. It shall be lawful for the Municipal Commissioners to grant licenses for the use of any place as a market for the sale of meat, fish, fruit and vegetables within the Municipality.

188. Every license to be granted under the provisions of this Act shall be in force until the next ensuing day therein named for the commencement thereof, and the said Municipal Commissioners shall grant such license whenever it shall be certified to them in writing, under the hand of the Vice-Chairman of the Municipal Commissioners, that such place is fit to be used as a market.

189. The Vice-Chairman, upon the application in writing of the owner of any such place, shall certify under the preceding section, unless such place be defective as a market in drainage, ventilation, water-supply, or proper width of paths and ways therein.

190. Whoever wilfully or negligently permits any place within the limits aforesaid to be used as a market for the sale of meat, fish, fruit, or vegetables, without a license under this Act, shall, unless such place shall have been used as a market for the sale of similar articles at the time of the passing of this Act, be liable to a penalty not exceeding two hundred Rupees; and shall also be liable to a further penalty not exceeding fifty Rupees for every day during which the said offence shall be continued.

191. Whenever three convictions under the provisions of the next preceding section shall have been pronounced in respect of the same place, it shall be lawful for the

Magistrate, on the application of the Municipal Commissioners, to order such place to be closed, and thereupon to appoint persons, or otherwise take order, to prevent such place being so used; and every person who shall sell or expose for sale, meat, fish, fruit, or vegetables in any place which shall have been so closed shall be liable for each offence to a fine which may extend to ten Rupees.

192. The owner or lessee of every place within the limits aforesaid at the time of the passing of this Act used as a market for the sale of meat, fish, fruit, or vegetables, shall, within six months of the passing of this Act, register, or cause to be registered, the same in a book to be kept for that purpose by the Municipal Commissioners at their office, in which shall be stated the name of the owner thereof, and of the lessee, the extent and boundary of the market, and the description of articles sold therein.

193. Such registration shall be made on the application in writing of the owner or lessee, or some one of the owners or lessees thereof, and every such application shall contain the particulars hereinbefore required to be set out in the registration.

194. Every transfer of interest in any such market as last aforesaid shall be in like manner registered within two months after the date of transfer.

195. Any market which, or the transfer of which, shall not be duly registered under the preceding sections shall be deemed to be a place not used as a market at the time of the passing of this Act.

196. The Municipal Commissioners may from time to time, if they shall think fit, with the sanction of the Government of Bengal, provide places within the said town for the purpose of being used as municipal markets, and may charge such rents, tolls and fees as to them may seem fit for the use of or right to expose goods for sale in such markets, and for the use of shops, stalls and standings therein.

197. All such rents, tolls, and fees which shall be imposed shall be recoverable by the Municipal Commissioners from the persons liable to pay the same, as if the amounts payable in respect thereof were rates due to the Commissioners from such persons under the provision of this Act.

198. It shall be lawful for the Commissioners to make bye-laws for the establishment and publication of a price-current by measure, weight, or tale of the articles sold in Municipal markets under this Act, and for prescribing the mode of sale of such articles.

199. It shall be lawful for the Municipal Commissioners to expel from any such market any person who or whose servants may be convicted of disobeying any such bye-law, and to prevent such person by himself or his servants

further carrying on any trade or business in such market, or occupying stalls or shops therein, and to determine any lease or tenure which such person may have in any such stall or shop.

PART XI.—JURISDICTION OF COMMISSIONERS IN MUNICIPAL AND OTHER CASES.

200. It shall be lawful for the Lieutenant-Governor to direct that any two or more Commissioners of any Municipality may exercise within the limits of such Municipality the powers of a Magistrate in respect of all or any of the offences under the following provisions of this Act, namely, Sections 69, 76, 77, 79, 84, 85, 86, 87, 88, 97, 117, 118, all the sections of Parts IX and X, and the rules and bye-laws which may be framed under any Section of this Act, and also in respect of all offences named in the Penal Code which may be triable under the Criminal Procedure Code by a subordinate magistrate of the first class. When such direction shall have been notified in the *Calcutta Gazette*, then any person accused of an offence, or liable to a penalty under or in pursuance of the above-mentioned provisions of this Act, shall be tried by a bench of not less than two Commissioners sitting together. With respect to any matter which may, under this section, be transferred to the jurisdiction of the Commissioners, the powers, duties, and authority of the Magistrate shall cease. Provided that if the Commissioners, or a bench of the Commissioners, refuse or omit to act under this section, the Magistrate may, with the sanction of the Commissioner of the Division, resume for such time as he may seem fit the functions transferred to the Commissioners under this section. It shall be competent to the Lieutenant-Governor to amend, modify, or recall any direction notified under this section. In case of difference of opinion between the members of a bench of Commissioners, the opinion of the majority shall prevail; when the numbers are equally divided, the opinion of the senior Commissioner shall prevail. The provisions of this section shall not be held to affect the appellate jurisdiction of the Magistrate of the district, under Chapter XXX of the Code of Criminal Procedure, or the powers of supervision vested in the Magistrate of the district by section 434 of the same Code.

201. It shall be lawful for the Commissioners at a meeting to make bye-laws for regulating the rotation in which, and the place at which, the Commissioners shall sit to decide cases under the next foregoing section, and to assign from the Municipal Fund salaries to clerks and other servants who may be appointed by the Commissioners to serve in the courts of benches of Commissioners sitting under the next preceding section.

PART XII.

THIRD CLASS MUNICIPALITIES.

202. It shall be lawful for the Lieutenant-Governor to extend the provisions of this and the next succeeding Part to any place not being a I or II Class Municipality, and it shall be lawful for the Lieutenant-Governor to delegate the power of extending the said provisions to such officers as he may see

fit. After such extension shall have been notified the Magistrate of the district may by a writing under his hand and seal appoint not less three and not more than five persons to be a punchayet in such place. Provided that no punchayet shall be appointed for any place in which there shall be less than sixty houses, and provided that no punchayet shall be appointed in any place, until a Magistrate shall, in personal communication with some of the residents of such town, have explained to them the general duties of a punchayet.

203. If two or more places containing together not less than eighty houses are so situate that some house in one of such places is situate within one mile of some house in each of the others, it shall be lawful for the Magistrate to form such places into a union, and for the purposes of this part such union shall be deemed to be a village.

204. It shall be lawful for the Magistrate of the district to permit or cause the election of a punchayet, under such rules as the Lieutenant-Governor may from time to time prescribe for any place, instead of appointing such punchayet under section 201 of this Act. The Magistrate of the district shall have power to accept resignations and to fill up vacancies in punchayets either by election or by appointment. Every member of a punchayet shall hold office until a successor be elected or appointed. But no person shall be eligible for membership of the punchayet of any place, unless he a resident in such place, or the proprietor or holder of land therein or his local agent, provided that such proprietor or local agent shall not be eligible for membership unless he be resident within one mile from some part of such place.

205. Whenever the majority in number of the adult male residents in any place or in two or more places so situate as in section 202 is set forth shall by a writing signed by them apply to the Magistrate of the district for the appointment of a punchayet in such place or places, it shall be lawful for him to appoint a punchayet under this Part in such place or places without regard to the number of houses therein contained, and all the provisions of this Part shall apply to such punchayet and to such place or places.

206. It shall be lawful for the Magistrate of the district to declare by a writing under his hand and seal what shall be the limits of any Municipality constituted under this Part. But in any case where no such declaration is made, the limits of a Municipality under this Part shall be taken to be the boundaries of the area of the village or villages which constitute such Municipality.

207. It shall be lawful for the punchayet of any Municipality constituted under this Part to impose within the limits of such Municipality the tax described at section 31 clause (a) of this Act, provided that the average annual tax on each holding shall not exceed one rupee.

208. The assessment to the tax imposed under the next foregoing section shall be made by the punchayet, subject as far as may be to the provisions

of sections 32, 33, 34, 35, 36, 37, 38, 39 and 40 of Part III, Chapter 2 of this Act in respect to Commissioners, provided that it shall not be necessary to send any list or notice of assessment under this part anywhere outside the place for which the assessments may be framed; and provided that any person dissatisfied with his assessment may appeal orally or in writing to the punchayet, who shall consider and decide finally on such appeal; and also that the Magistrate may call for the list of assessment of any village, and that he shall call for such list on the application of ten tax-payers of such villages, and may pass such orders on any such list as he may think fit.

209. Every punchayet shall appoint one of their number to receive and collect the tax, and to grant receipts for the same and to keep the accounts thereof, and it shall be lawful for the punchayet to permit the person so appointed to retain any sum not exceeding six per cent. of the amount collected by him to re-pay the costs of such collection.

210. The collecting member of the punchayet shall collect the tax due every quarter, following, as near as may be, the procedure laid down in sections 99, 100, 102, 104, 105, and 107 of Part IV of this Act, provided that the collecting member shall himself do all which must be done by the tax collector or by the Magistrate under the above-mentioned sections; and provided that the collecting member be not bound to make use of the forms prescribed in these sections, so long as any warrant of distress issued for tax due under this Part shall be in writing, and shall be under the hand of the collecting member.

211. Any person against whom distress may issue under the next foregoing section may, if he dispute his liability to the arrear demanded of him, apply to the Magistrate either orally or in writing, and the Magistrate, after hearing the applicant's statement and making such enquiry as he may see fit, shall pass such order as he may deem proper on the application.

212. The proceeds of the tax levied under this part, together with any fines realized under this Act, and any other sum which may become applicable for the purposes of this Act, shall constitute a fund which shall be called "The Village Fund;" and such fund shall be applicable to the payment of chowkeedars, and the balance after payment of chowkeedars shall be applicable to the supply of drinking water to the residents or to their cattle, to simple conservancy operations, and to the support of *patshalas* or village schools.

213. The punchayet of any place shall be bound to appoint such persons to be chowkeedars, as they may deem fit, and to assign them salaries out of the Village Fund; provided that not more than one chowkeedar be appointed to every sixty houses, and that the salary of a chowkeedar be not less than three rupees a month, subject to reduction on account of the revenue due on any *chakran* lands enjoyed by such chowkeedar.

214. On the appointment of any chowkeedar the punchayet shall give to him a certificate signed by them of such his appointment, specifying therein the rate of salary at which he has been appointed, and he shall within seven days produce such certificate at the police station within the limits of which his village may be situate, and the officer in charge of such station shall cause the particulars of such certificate to be registered in a book to be kept in such station for the purpose of such registration, and shall report the same to the Magistrate.

215. It shall be lawful for the Magistrate if he see fit to dismiss any chowkeedar for misconduct or neglect of duty, and the punchayet shall thereupon appoint a successor. It shall be lawful for the punchayet to dismiss or fine to the extent of one month's salary any chowkeedar for neglect of duty or misconduct, provided that such chowkeedar may within sixty days appeal to the Magistrate against such dismissal or fine, and the Magistrate shall thereon make such enquiry and pass such order as he may see fit.

216. Every chowkeedar appointed under the provisions of this Part shall perform the following duties:

(1) He shall give immediate information to the officer in charge of the police station within the limits of which the village is situate of every unnatural, suspicious, or sudden death which may occur, and of every offence specified in the final section of this Part which may be committed within the village of which he is chowkeedar, and he shall further keep the police informed of all disputes which are likely to lead to any riot or serious affray.

(2) He shall arrest all proclaimed offenders, and all persons whom he may find in the act of committing any offence specified in the final section of this Part.

(3) He shall observe, and from time to time report to the officer in charge of the police station within the limits of which the village may be situate, the movements of all bad characters in such village.

(4) He shall report to the officer in charge of such police station the arrival of suspicious characters in the neighbourhood.

(5) He shall present himself at such station twice in each week, if such station be within two miles of the village, and if it be more remote once in each week, or once in each fortnight as the Magistrate may direct.

(6) He shall supply any local information which the Magistrate or any officer of police may require.

(7) He shall obey the orders of the punchayet in regard to keeping watch in the village and other matters connected with his duties as chowkeedar.

217. Whenever the chowkeedar may arrest any person, such chowkeedar shall forthwith take the person so arrested to the police station within the limits of which such village is situate, provided that if the arrest is made at night, such person shall be so taken, as soon as convenient, on the following morning.

218. The punchayet shall exercise a general control over the chowkeedars, and every member of such punchayet who may know or be informed of the commission within the village of any offence specified in the final section of this Part shall forthwith cause the same to be reported by the chowkeedar to the officer in charge of the police station within the limits of which the village may be situate, and on failure of the chowkeedar, such member shall himself report the same to such officer.

219. Every chowkeedar shall receive, month by month, the full amount of his salary from the member of the punchayet appointed to collect the tax.

220. Whenever the salary of any month shall not be paid in full to any chowkeedar on or before the 15th of the month following, such chowkeedar may apply to the Magistrate, who shall call upon the punchayet within ten days to show cause why they should not pay the amount due to such chowkeedar, and the Magistrate after hearing the punchayet shall pass such order as he may deem fit directing the punchayet or any member thereof to pay the chowkeedar's salary, or directing distraint of the property of the punchayet or any member thereof to the amount of the arrear due to the chowkeedar.

221. All powers vested in the punchayet for the appointment and dismissal of chowkeedars and for fixing the number of chowkeedars to be appointed and the rate of their pay, and for making and levying the assessments hereinbefore directed to be made, may be exercised by the Magistrate or any person whom the Magistrate may by any writing under his hand authorise on that behalf, in case the punchayet shall, for fifteen days after a notice from the Magistrate to exercise such powers or any of them, refuse or neglect to exercise the same, and the Magistrate shall be bound to enquire into any matter concerning the due observance of the provisions of this part in any village whenever ten adult tax-payers may make a representation to the effect that the punchayet's proceedings require supervision or amendment.

222. The punchayet shall be bound to affix once in every quarter on a conspicuous place in the village, or in each village of their circuit, an account of the receipts and expenditure of the quarter next preceding. Any ten adult tax-payers of the village may, if the accounts are not published, or if they are dissatisfied with such accounts, make a representation to the Magistrate, who shall be bound to supervise the same.

223. It shall be lawful for the Lieutenant-Governor to invest all or any of the members of a punchayet with powers described in Section 200 of this Act so far as the same are applicable. Two or more of the members so invested may thereafter sit together under such bye-laws as to rotation, days of sitting, and place of sitting, as the Magistrate may from time to time prescribe, and so sitting shall have jurisdiction within the limits of their municipality. All the provisions of the said section with respect to Commissioners shall apply to members of a punchayet invested with powers as aforesaid so far as the said provisions are or may be applicable.

PART XIII.

MISCELLANEOUS.

224. Every bill, notice, schedule, summons, or notice of demand, regarding any assessment, rate, or tax or any money due in respect of the same, may be served personally upon the person to whom the same is assessed, or be left at his usual place of abode with some adult male member or servant of his family, or if it cannot be so served, may be put up on some conspicuous part of such place of abode, and shall thereby be deemed to be duly served. Provided that, if the place of abode of the owner of any house, building, or land in respect of which a rate is assessed be unknown, or if the owner of any such house, building, or land be not resident within the limits of the place, every such bill, notice, summons, or notice of demand, shall be deemed to have been duly served, if put up on some conspicuous part of the house, building, or land in respect of which the rate is assessed.

225. No assessment, and no charge or demand of a rate or tax made under the authority of this Act shall be impeached or affected by reason of any mistake in the name of any person liable to pay the rate or tax, or in the description of any property or thing liable to the rate or tax, or any mistake in the amount of assessment, provided the directions of this Act be in substance and effect complied with; and no proceedings under this Act shall, for want of form, be quashed or set aside in any court of justice.

226. No distress levied by virtue of this Act shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the notice, schedule, summons, notice of demand, warrant of distress, inventory, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him; but all persons aggrieved by such irregularity may recover full satisfaction for any special damage sustained by them in any court of competent jurisdiction.

227. Instead of proceeding by distress and sale, or in case of failure to realize by distress the whole or any part of any rates, taxes, expenses, or charges, recoverable under the provisions of this Act, the Commissioners may sue the person liable to pay the same in any Court of competent jurisdiction.

228. The Commissioners may make compensation out of the Municipal Fund to any person sustaining any damage by reason of the exercise of any of the powers vested in the Commissioners, their officers or servants, under this Act.

229. It shall be lawful for the Commissioners to make bye-laws, and to repeal, alter, and amend the same, subject to the confirmation hereinafter-mentioned, for regulating the time and mode of collecting the rates and taxes mentioned in this Act, for regulating the conduct of persons employed by them, for the management of all matters connected with conservancy, and for carrying out all the purposes of this Act; and to affix fines as penalties for the infringement of such bye-laws. Provided that no bye-law shall be repugnant to any law in force, and that no fine for any one infringement of a bye-law shall exceed twenty Rupees, and that in case of a continuing infringement no fine shall exceed five Rupees for every day after notice from the Commissioners of such infringement.

230. No bye-law or alteration of a bye-law shall have effect until the same shall have been approved and confirmed by the Lieutenant-Governor of Bengal, and shall have been published for such length of time and in such manner as the Lieutenant-Governor of Bengal shall order.

231. All bye-laws, when the same shall have been duly confirmed and published, shall, until the same be repealed or altered, be of the like effect as if they were inserted in this Act.

232. No action shall be brought against the Commissioners, or against a punchayet, or any of their officers, or any person acting under their direction, for anything done under this Act until the expiration of one month next after notice in writing shall have been delivered or left at the office of the Commissioners or affixed at some conspicuous place in the village of such punchayet, or at the place of abode of such person, explicitly stating the cause of action and the name and place of abode of the intended plaintiff; and unless such notice be proved, the court shall find for the defendant, and every such action shall be commenced within three months next after the accrual of the cause of action, and not afterwards; and if any person to whom any such notice of action is given, shall before such action is brought, tender sufficient amends to the plaintiff, such plaintiff shall not recover.

233. The Commissioners may direct any prosecution for any public nuisance whatever, and may order proceedings to be taken for the recovery of any penalties, and for the punishment of any persons offending against the provisions of this Act, and may order the expenses of such prosecution or other proceedings to be paid out of the Municipal Fund, and no charge of an offence under this Act shall be instituted without the order or consent of the

CLASS II.

Every Merchant, Banker, Shroff, Banian, wholesale Trader, and Commission Agent, and every practising Surgeon, Physician, Dentist, Architect, Civil Engineer, Barrister, Attorney, Proctor, Notary Public, and Pleader of the High Court ...	Rs. 50
Every owner or farmer of a hât or bazaar.	
Every owner of Cotton, Jute, Hide, or other Screws and every Auctioneer ...	

CLASS III.

Every Broker or Daloll employed in the wholesale transfer or purchase of Imports or Exports, or in the sale of Government Securities, Shares, and Bills of Exchange, or in procuring Freight.	25
Every Practising Licentiate of Medicine, Apothecary, and Veterinary Surgeon...	
Every keeper of a Spirit-shop, Punch-house or Billiard room, wholesale Tobacco or Jute Depôt ...	25
Every Hotel-keeper, Boarding House-keeper, Shop-keeper, Manufacturer or Trader, whose shop or place of business is assessed under Section at more than 250 or less than 100 Rupees a month ...	
Every Pawn-broker, and every person having a shop or place of business registered under Section ...	
Every Pleader, Mooktear, or Law Agent, not included in Class II. ...	

CLASS IV.

Every Hotel-keeper, Boarding and Lodging House-keeper, Shop-keeper, Manufacturer or Trader, whose shop or place of business is kept in a brick-house, but not included in Class II. or Class III.	12
Every keeper of a permanent stall at a daily public market or in a chook ...	
Every Poddar or Money-changer ...	
Every Hakeem, Koberaj, and Native Doctor, not included in any other Class	

CLASS V.

Every keeper of a shop not included in any other Class, and every Daloll not included in Class III. ...	4
Every Pedlar, Hawker, Box-wallah, and keeper of a shop at a periodical market or hât ...	

CLASS VI.

All other itinerant dealers and keepers of stalls at periodical markets or hâts ...	1
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NOTE.—A person who carries on several kinds of business, and may come under more than one of the designations in this schedule, shall be chargeable only under one of such designations at the discretion of the Chairman or of the sub-committee as the case may be, and in the case of a firm consisting of two or more persons, payment by any one of such persons shall be considered to be payment by the firm.

SCHEDULE E.

(REFERRED TO IN SECTION 91.)

Maximum rates of tolls payable on entering the municipal limits.

	Rs.	As.	P.
On every four-wheeled carriage on springs ...	0	8	0
Ditto two-wheeled ditto ...	0	4	0
On every cart, hackery on springs, or cart drawn by men, buffaloes, bullocks, horses, ponies, asses, or mules laden ...	0	4	0
Ditto ditto not laden ...	0	2	0
On every buffalo or bullock laden ...	0	1	0
Ditto horse laden or ridden ...	0	2	0
Ditto ditto not laden or ridden ...	0	1	0
Ditto pony or ass laden or ridden ...	0	1	0
Ditto elephant ditto ...	1	0	0
Ditto camel ...	0	4	0

SCHEDULE F.

FORM A.—(REFERRED TO IN SECTION 104.)

Notice of Demand.

Municipality of ()
To _____ of _____
Take notice that the sum of Rs. _____ being the amount of assessment due from you to the Fund of the said Municipality is hereby demanded from you, and that if you do not, within ten days, pay the same with two annas as the cost of this notice into the office of _____, the same with costs will be levied by distress and sale of your goods and chattels.

(Sd.)

Magistrate of _____

FORM B.—(REFERRED TO IN SECTIONS 104 and 105.)

Table of Fees payable upon distrainments under this Act.

Sums distrained for	Fee.
	Rs. As.
Under 1 Rupee ...	0 4
1 and under 5 Rupees ...	0 8
5 " 10 " ...	1 0
10 " 15 " ...	1 8
15 " 20 " ...	2 0
20 " 25 " ...	2 8
25 " 30 " ...	3 0
30 " 35 " ...	3 8
35 " 40 " ...	4 0
40 " 45 " ...	4 8
45 " 50 " ...	5 0
50 " 60 " ...	6 0
60 " 80 " ...	7 8
80 " 100 " ...	9 0
Above 100 " ...	10 0

The above charge includes all expenses including the service of notice of demand, except when persons are kept in charge of property distrained, in which case three annas must be paid daily for each man.

FORM C.—(REFERRED TO IN SECTION 105.)

Warrant of Distrainment.

To (here insert the name of the officer charged with the execution of the warrant.)

THE following Bill was read in the Council of the Lieutenant-Governor of Bengal for the purpose of making Laws and Regulations on the 9th March 1872, and was referred to a Select Committee who are to report therein in one month:—

A Bill to provide for the due appropriation of certain educational and charitable endowments.

WHEREAS there are at present endowments granted in money or in land for certain educational and charitable purposes, in respect of which either no person has been originally nominated a trustee, or there is now no trustee living or capable of being appointed under the instrument of endowment; and whereas it is expedient to provide for their due appropriation and management; It is enacted as follows:—

1. All moneys or lands heretofore granted, or which may be hereafter granted by any person or persons for any charitable or educational purposes, within any district within the territories subject to the Lieutenant-Governor of Bengal, for which no person or persons have been nominated trustees or trustee, or for which there may not be any living trustee, or any power of appointing a trustee under the instrument of endowment, are hereby vested in such trustees as the said Lieutenant-Governor shall, as soon as possible after the passing of this Act, nominate, as hereinafter provided.

2. For every district in respect of which any such endowments have been made whereof at the time of the passing of this Act or thereafter there shall not be any trustee living or capable of being appointed under the instrument of endowment, the said Lieutenant-Governor shall nominate trustees in whom such endowments shall vest; provided that the chief executive officer of such district shall be nominated as one of the trustees in respect of such endowments. Such trustees shall have in all respects the same powers and responsibilities in relation thereto as if they had been appointed by the donor thereof under the instrument of endowment, and where there is no instrument of endowment, they shall be subject in all respects to the orders of the Lieutenant-Governor.

3. It shall be the duty of such trustees to take order that all endowments so vested in them as aforesaid shall be duly appropriated to the purposes for which they were destined by the respective donors thereof, so far as the same can be ascertained, and to invest the same in Government securities, and to apply the yearly proceeds or income thereof to the purposes aforesaid, subject in all respects to the general instructions of the Lieutenant-Governor; provided that the trustees may, with the sanction of the said Lieutenant-Governor, devote any portion of the capital sum or value of the said funds to any especial object for the furtherance of the above-mentioned purposes.

4. Any person interested in the purposes to which any endowment, not being for a purely religious purpose, may have been intended may, without joining as plaintiff

any of the other persons interested therein, issue before the civil court the trustee, manager, or superintendent by whom such endowment may be administered, or any trustee appointed under this Act, for any misfeasance, breach of trust, or neglect of duty, committed by such trustee, manager, or superintendent, in respect of the trusts vested in or confided to them respectively, and the civil court may direct the specific performance of any act by such trustee, manager, or superintendent, and may decree damages and costs against such trustee, manager, or superintendent, and may also direct the removal of such trustee, manager, or superintendent. The interest required in order to entitle a person to sue under this section need not be a pecuniary or a direct or immediate interest, or such an interest as would entitle the person suing to take any part in the management or superintendence of the trusts. Provided that any trustee, nominated under this Act, shall not be liable for damages on account of any act done or omitted by him *bonâ fide* for the furtherance of the objects of the trust; and provided also that any costs which may be awarded against any trustee as aforesaid in a suit instituted under this section may, if the said trustee be found to have acted *bonâ fide*, be defrayed from the endowment vested in such trustee under this Act.

5. The Lieutenant-Governor may at any time nominate and appoint a new trustee or trustees for any endowment which by virtue of this Act has been vested as aforesaid, and also may at any time remove any trustee so appointed as aforesaid.

STATEMENT OF OBJECTS AND REASONS.

IN some districts of Bengal there are certain educational and charitable endowments for which there are no properly constituted trustees. The present Bill is introduced to enable the Government to appoint standing trustees, who shall be responsible for the care of such endowments.

C. BERNARD.

The 2nd March 1872.

HERBERT COWELL,

Asst. Secy. to the Govt. of Bengal,

Legislative Department.

Orders by the Lieutenant-Governor of Bengal.

Revenue and General Departments.

No. 711K.

APPOINTMENTS.

The 27th March 1872.—Mr. Cecil Ansdell Wilkins, Assistant Magistrate of Begoo Serai, in Monghyr, is vested with power to dispose of cases under Section 318 of the Criminal Procedure Code.

Mr. William Brereton Hudson to be a Captain in the Chumparun Troop, Behar Mounted Rifle Volunteers.

Dr. Brabazon Shiels Booth to be Medical Officer of the Behar Mounted Rifle Volunteers.

The 28th March 1872.—Babu Sasi Pada Banurji to be Sub-Registrar of Assurances of the Sub-district of Buranagore, in the 24-Pergunnahs.

The 30th March 1872.—Babu Jadunath Mukherji, Deputy Superintendent of Canal Revenue, is vested with the powers of a Deputy Collector, under Act X of 1870, for the acquisition of land in the districts of Midnapore and Hooghly.

Mr. Henry Luttman-Johnson to be Private Secretary to the Lieutenant-Governor, from the date on which Mr. Henry Sneyd Beadon may make over charge to him.

Mr. William Kemble to officiate as a Magistrate and Collector of the First Grade, from the date on which he may relieve Mr. John Burney Worgan.

The following Officers of the Subordinate Judicial Service are transferred to the several grades of Extra Assistant Commissioners specified below:—

From the First Grade of Munsiffs to the Fifth Grade of Extra Assistant Commissioners.

Babu Paddalochan Das, Goalparah, (on leave).
Harkant, Mungledye, Durrung.
Ramgobind Deb, Cachar.

From the Second Grade of Munsiffs to the Sixth Grade of Extra Assistant Commissioners.

Babu Ganganath Sarmah, Kamroop.
Moulvi Fazilat Husain, Chittra, Hazareebaugh.
Babu Navin Chandra Pal, Lacdah, Maunbhoom.
Krishna Prasad Choudhuri, Manbazar, Maunbhoom.
Moulvi Gazaffar Ali, Hazareebaugh.
Munshi Sadanand, Kishenpore, Loharduggah.

From the Third Grade of Munsiffs to the Seventh Grade of Extra Assistant Commissioners.

Babu Lakhinath Sarma, Tezapore, Durrung.
Radhamohan Gossain, Burpettah, Kamroop.
Dinonath Sarma, North Luckimpore.
Champak Narayan, Nowgong.
Parbati Kumar Mitra, Kurruckdeah, Hazareebaugh.
Nanda Kumar Aykut, Raghunathpore, Maunbhoom.
Nilmadhab Bandyopadhyay, B.L., Loharduggah.
Haranath Ghosh, Luckimpore.
Gangagobind Sarma, Sebsaugor.
Anand Kumar Sarbadhikari, Gola-ghat, Sebsaugor, (on leave).
Krishna Chandra Das, B.L., Julpigore.
Karunamoye Banurji, Nowgong.
Haris Chandra Chaki, Dhoobree, Goalparah.

The following Officers who are acting as Munsiffs will officiate as Extra Assistant Commissioners, viz.:—

Babu Sharat Chandra Banurji to officiate as an Extra Assistant Commissioner in Goalparah, during the absence, on leave, of Babu Paddalochan Das, or until further orders.

Babu Sivprasad Chackravarti to officiate as an Extra Assistant Commissioner in Sebsaugor, during the absence, on leave, of Babu Anand Kumar Sarbadhikari, or until further orders.

All the abovenamed Officers are invested with the powers of a Munsiff under Section 10, Act VI of 1871, which they will exercise within the local limits of the jurisdiction of their late appointments as Munsiffs.

The following Officers who have held criminal powers will continue to exercise them, viz.:—

Babu Ramgobind Deb,	Powers of a Magistrate. +
Cachar	
Paddalochan Das, Goalparah	
Nilmadhab Bandyopadhyay, Loharduggah	Powers of a Subordinate Magistrate, First Class.
Haranath Ghosh, Luckimpore	
Navin Chandra Pal, Maunbhoom	
Harkant, Durrung	
Moulvi Fazilat Husain, Hazareebaugh	Powers of a Subordinate Magistrate, Second Class.
Gazaffar Ali, ditto	
Babu Radhamohan Gossain, Kamroop	
Munshi Sadanand, Loharduggah	
Babu Dinonath Sarma, Luckimpore	
Krishna Prasad Choudhuri, Maunbhoom	
Nanda Kumar Aykut, Maunbhoom	
Champak Narayan, Nowgong	
Parbati Kumar Mitra, Hazareebaugh	

The following Officers will also exercise the powers of a Deputy Collector:—

Babu Paddalochan Das.
Champak Narayan.

Babu Durga Churn Mandal of Narsigdar Chok, in the 24-Pergunnahs, is licensed under Section 47, Part V, Act V of 1865, to grant Certificates of Marriage between Native Christians.

The 1st April 1872.—In supersession of the orders of the 18th ultimo, Mr. William Henry Ryland, Deputy Magistrate and Deputy Collector, is posted to the 24-Pergunnahs.

Mr. C. E. Gouldsbury is appointed to officiate as an Extra Assistant Commissioner in Darjeeling, and is vested with the powers of a Subordinate Magistrate of the Second Class.

The following Officers are appointed to officiate as Joint-Magistrates and Deputy Collectors of the First Grade, viz.:—

Mr. Charles Edward Crawford Merington.
John Ward.
Anthony Patrick MacDonnell, B.A.
Christopher Henry Vowell.
John Scobell Armstrong, from the date on which Mr. G. E. Makgill avails himself of his leave.
Frederick Hubert McLaughlin, L.L.M. and B.A., from the date on which Mr. W. Kemble takes charge of the District of Purneah.

The following Officers are appointed to officiate as Joint-Magistrates and Deputy Collectors of the Second Grade, viz. :—

- ✓ Mr. James Francis Bradbury.
- ✓ " Richard Maunsell Waller, B.A.
- ✓ " Arthur Forbes, B.A.
- ✓ " James Crawford, B.A.
- ✓ " John Whitmore, from the date of Mr. J. Scobell Armstrong's promotion to act in the First Grade.
- ✓ " Daniel Walter McMullen Testro, B.A., from the date of Mr. F.H. McLaughlin's promotion to act in the First Grade.

✓ Babu Mahendranath Gupta, recently appointed to officiate as a Deputy Magistrate and Deputy Collector in the Burdwan Division, is posted to Beebhoom.

✓ Babu Rajaninath Chatturji, recently appointed to officiate as a Deputy Magistrate and Deputy Collector, is posted to Purneah, and is vested with the powers of a Subordinate Magistrate of the Second Class.

✓ Babu Nil Chandra Chackravarti, recently appointed to officiate as a Deputy Magistrate and Deputy Collector, is posted to the Burdwan Division, and is vested with the powers of a Subordinate Magistrate of the Second Class.

LEAVE OF ABSENCE.

✓ The 30th March 1872.—Mr. George Edward Makgill, Officiating Joint-Magistrate and Deputy Collector, 24-Pergunnahs, is allowed six months' leave, under Section 12, Chapter IV of the Civil Leave Code, together with subsidiary leave for thirty days.

H. L. DAMPIER,
Secy. to the Govt. of Bengal.

The following Order issued by the Government of India, in the Home Department, is republished for general information :—

No. 1471.—Fort William, the 27th March 1872.—Notification.—Public.—The undermentioned Covenanted Civil Servants have been granted by Her Majesty's Secretary of State for India extensions of leave for the periods specified against their names :—

✓ Mr. P. Hurley, three months (medical certificate.)

The following Order issued by the Government of India, in the Financial Department, is republished for general information :—

LEAVE AND ALLOWANCES.

No. 2271.—Fort William, the 27th March 1872.—In supersession of Rule II in the first of the extracts composing the appendix to the Acting Allowance Code, the Governor General in Council is pleased to decide that the salary of an Officiating Director-General of Telegraphs shall be regulated by the rules for the grant of acting allowance to officers in civil employ generally.

The following Order issued by the Government of India, in the Military Department, is republished for general information :—

No. 337.—Fort William, the 28th March 1872.—The following Military letter from the Right Hon'ble the

Secretary of State for India, No. 50, dated 29th February 1872, is published for general information :—

MILITARY.

No. 50.

INDIA OFFICE :

London, 29th February 1872.

To His Excellency the Right Hon'ble the Governor
General of India in Council.

MY LORD,

1. With a view to meeting the cases, and facilitating the retirement of the senior officers of the Army subject to the Indian Retiring Regulations, Her Majesty's Government have resolved so to modify the present Regulations, as expressed in Clause 30 of the Furlough Rules of 1854, as to admit of a larger amount of furlough being reckoned as service by claimants to the higher rates of pension granted in 1866.

2. With this view, I request that it may be notified to the service that, from and after the date of this despatch the following regulation will be substituted for clause 30 of the rules above referred to, and will govern the rates of pension to be granted to officers retiring under the Indian Regulations :—

"No furlough or leave of absence, as announced in General Orders, exceeding two years in twenty years' aggregate service, three years in twenty-five years' service, four years in thirty years' service, five years in thirty-five years' service, and six years in thirty-eight years' service shall be allowed to count as service for the retiring pension; and no difference will be made in this respect between leave of absence taken in Europe or elsewhere, in or out of India, or whether the leave be on sick certificate or on private affairs."

I have, &c.,

(Sd.) ARGYLL.

H. L. DAMPIER,

Secy. to the Govt. of Bengal.

The following Notification from the Government of India, Financial Department, is published for general information :—

No. 2311.

GOVERNMENT OF INDIA.

FINANCIAL DEPARTMENT.

SEPARATE REVENUE.

Opium.

To the SECY. to the GOVT. of BENGAL, REVENUE DEPARTMENT.

Fort William, the 26th March 1872.

I AM directed by the Governor-General in Council to request that, with the permission of His Honor the Lieutenant-Governor, the Board of Revenue may be instructed to inform all persons interested in the opium trade that the Government of India has determined not, under any circumstances, to sell, in the calendar year 1873, more than 48,000 chests of Bengal opium.

2. The Government cannot, of course, until the crop is gathered, pledge itself to bring forward for sale in 1873 as many as 48,000 chests; but should the crop now on the ground yield more than 48,000 chests in addition to the number required to complete the provision of 1872, the excess will not be sold in 1873, but will be reserved for sale in 1874.

H. L. DAMPIER,
Secy. to the Govt. of Bengal.

The 19th March 1872.—The following amended Notification is published for general information :—

NOTIFICATION.

The Lieutenant-Governor has been pleased to pass the following orders connected with the departmental examinations of junior members of the Covenanted Civil Service, the Subordinate Executive Service, the Non-Regulation Commission, Police, &c.

1. Natives of Hindustan serving in Behar and Hazareebaugh shall not be required to pass in Bengali, but it will be optional with them to do so, and those who do pass will be eligible for service and promotion in Bengal as well as in Behar.

2. Officers other than natives of Hindustan will not be required to pass in Hindustani, but may do so, and will then be eligible for service and promotion in Behar and Hazareebaugh, as well as in Bengal.

3. These exemptions are not applicable to officers in the Police, who must pass in both Bengali and Hindustani as now, unless specially exempted.

4. Covenanted Civil Servants must always pass in Bengali, and those who have not passed in Hindustani will have no claim to increased powers or to the full pay of Rs. 500, and cannot have powers or promotion in a Hindustani district, although the higher powers may be conferred on them in a Bengali district if the public service requires it.

5. These relaxations of the existing rules are experimentally introduced, and it may be found necessary to revert to the present requirements that all officers should qualify in both the vernacular languages.

6. It should be understood that officers of all departments who have hitherto been required to pass the examinations are still required to pass them as modified by these rules.

7. The next examination will be held about the end of May, and the exact date will be notified hereafter.

The following Rules which have been laid down for the next examination are published for general information :—

LANGUAGE EXAMINATION.

(1.) For Covenanted and other officers alike one paper shall be prepared in each of the test languages, the first half of which shall be in an easier style than the rest. Of the total number of marks assigned to the whole paper, 50 shall be allotted to the first portion, and 50 to the second. To pass for the Lower Standard, 25 marks at least in the first part must be obtained, and to pass for the Higher Standard, 50 on the whole; of which 25 must be obtained in the second part.

(2.) Covenanted Civil Servants will be required to pass by the Lower Standard in languages only.

EXAMINATION IN LAW.

(3.) All other officers will be required to pass for the Lower Standard—

I.—In a paper confined to Criminal Codes, which shall be prepared specially for this standard, and for which the use of books will be allowed;

II.—In part of the general paper of Local Laws, &c., as described below, which is to be answered without books.

(4.) All examinees will be required to pass for the Higher Standard in two papers containing questions on Local Laws, Regulations, and Rules.

One of these papers, which is to be answered without the use of books, will be so arranged as to serve as a test for officers by both standards; it will contain a certain number of questions, to the first half of which 100 marks will be assigned and to the last half 120; 50 marks obtained in the first half of the questions will pass officers for the Lower Standard, and a total of 120 will pass for the Higher Standard, provided that at least 60 of those 120 be obtained in the latter half of the questions.

The other paper, for which the use of books will be allowed, will be confined to the examination for the Higher Standard.

Local Laws, Regulations, and Rules, in which the examination will be without the aid of Books.

Regulations I, VIII, and XLVIII of 1793, and XII of 1817.

Regulations I and II of 1819.

Regulation VIII of 1819.

Regulations VII of 1822, IX and XI of 1825, and IX of 1833.

Acts IX of 1847, XXXI of 1858, and IV (B.C.) of 1868.

Act XI of 1859.

Acts VII (B.C.) of 1868 and VIII (B.C.) of 1869.

Acts XXI of 1856* and XXIII of 1860.*

Act V of 1861.

Act VIII of 1871.*

Bengal Council Act X of 1871.*

The Municipal Act in force for Lower Bengal.†

In which the examination will be with the aid of books.

All the Acts of Parliament‡ relating to India, Acts of the Government of India, Bengal Regulations, and Bengal Acts; Circulars of Bengal Government, the High Court, and the Board of Revenue, of the Inspectors-General of Police, Jails, and Registration.

H. L. DAMPIER,

Secy. to the Govt. of Bengal.

* As to the laws which are marked thus* a knowledge of the principles and general scheme of the law will be sufficient. Acquaintance with the executive details and other particulars will not be required.

† As the existing Municipal Acts are about to be reconsidered, no questions will be set on Municipal Acts at the next examination.

‡ As it is doubtful whether the Acts of Parliament are now readily accessible to officers in the mofussil, no questions will be set on them before the second examination of 1872, by which time officers can provide themselves with a collection of these Acts.

NOTIFICATION.

The 2nd April 1872.—The annexed notice regarding the Survey Classes to be opened at the Presidency College in June next is published for general information, with reference to the Subordinate Executive Service Examination Rules published in the *Calcutta Gazette* of the 27th September last. Survey Classes will also be opened at Dacca and at Patna and at such other Colleges and Schools as may hereafter be notified.

Ample notice is given regarding these classes in order that candidates for the Subordinate Executive Service may have full time to apply for leave of absence to attend the Survey Classes. It will be in the discretion of the heads of offices to grant leave to intending candidates; but His Honor the Lieutenant-Governor wishes that candidates who may be expected to do justice to the opportunity and to be fit for the Subordinate Executive Service should be allowed leave of absence on such terms as may be favorable to them without prejudice to the public service.

NOTICE.

The Session 1872-73 of the Engineering Department of the Presidency College will open on Monday, the 17th June.

The course of studies, from June to the end of January for the first year class, will include instruction in the tests in engineering and surveying prescribed in the Rules published by Government in the *Calcutta Gazette* of the 27th September 1871, for the examination of candidates for admission to the Subordinate Executive Service, and the Police and Opium Departments. Candidates, who wish to join the class for the purpose of qualifying to pass this examination, should present themselves at the College on the first day of the new Session.

J. SUTCLIFFE,
Principal.

H. L. DAMPIER,
Secy. to the Govt. of Bengal.

Judicial and Political Departments.

No. 500J.

APPOINTMENTS.

The 26th March 1872.—Sahibzadah Muhammad Wahajuddin is appointed under Section 4, Act II. of 1869, to be a Justice of the Peace for the town of Calcutta.

The 27th March 1872.—Mr. Trevor John Chichele Grant to be Secretary to the Local Committee of Public Instruction at Monghyr.

The 30th March 1872.—Captain William Brereton Birch to officiate as District Superintendent of Police, Tipperah, during the absence, on duty, of Mr. John Masters, or until further orders.

The 1st April 1872.—Surgeon David Boyes Smith, M.D., to officiate as Principal of the Calcutta Medical College, Professor of Medicine in the College, and ex-officio First Physician of the College Hospital, during the absence, on furlough, of Surgeon-Major Norman Chevers, or until further orders.

Surgeon John Elliot, M.D., to officiate as Civil Surgeon of Howrah, during the absence, on furlough, of Surgeon Robert Bird, or until further orders.

Mr. James Flyter to be a Member of the Local Committee of Public Instruction at Deoghur.

Prince Muhammad Rahim-ud-din is appointed under Section 4, Act II. of 1869, to be a Justice of the Peace for the town of Calcutta.

This appointment and that of Sahibzadah Muhammad Wahajuddin supersede the appointments of Sahibzadah Prince Muhammad and Wahidzuddin notified in the *Calcutta Gazette* of the 27th ultimo.

Babu Nimai Charan Basu is appointed to be an Honorary Magistrate in Balasore, and vested with the powers of a Subordinate Magistrate, Second Class.

LEAVE OF ABSENCE.

The 28th March 1872.—Sub-Assistant Surgeon Abinas Chandra Banurji for one month, under Section 3, Supplement F of the Civil Leave Code, in extension of the leave granted to him under orders of the 9th instant.

The 30th March 1872.—Mr. L. W. Hutchinson, Subordinate Judge of Tipperah, for one year, under Section 7, Supplement F of the Civil Leave Code.

The 1st April 1872.—Surgeon-Major Norman Chevers, Principal of the Calcutta Medical College, is allowed subsidiary leave for a period not exceeding thirty days, preparatory to proceeding to Europe on furlough.

The 2nd April 1872.—Babu Kailas Chandra Dev, First Subordinate Judge of the 24-Pergunnahs, for one month, under Section 18, Chapter VI. of the Civil Leave Code, in extension of the leave granted to him under orders of the 11th ultimo.

NOTIFICATION.

The 1st April 1872.—The services of Third Grade Sub-Assistant Surgeon Abinas Chandra Gupta, a Supernumerary at the Presidency, are placed at the disposal of the Chief Commissioner of Oude.

C. BERNARD,
Offg. Secy. to the Govt. of Bengal.

The following Notification issued by the Government of India, in the Home Department, is published for general information:—

No. 478.

HOME DEPARTMENT.

JUDICIAL.

Fort William, the 12th March 1872.

NOTIFICATION.

It is hereby notified that the Secretary of State for India has by Resolution in Council declared the provisions of the 1st Section of an Act passed in the 33rd year of Her Majesty's reign, chap. 8, entitled an Act to make better provision for making Laws and Regulations for certain parts of India and for certain other purposes relating thereto, to be from the 15th day of March 1872 applicable to the following parts of the territories under the Government of the Lieutenant-Governor of Bengal, that is to say,—

The Damin-i-koh.—So much of Pergunnah Bhaugulpore and of Pergunnah Sutticare as lies east of the Geroosh Nuddee, and south of a line

drawn eastward from Humza Chuck to the village of Dighee.

Zillah Bhaugulpore.	Pergunnah Telecaghuree ...	Except such parts of them as are now or may be hereafter situate on the left bank of the main stream of the Ganges, so that in any change in the course of the river the main stream shall be the boundary.
	" Jumoonnee ...	
	" Chetowleah ...	
	" Kankjole ...	
	" Bahadurpore ...	
	" Akbernuggur ...	
	" Inayutnuggur ...	
	" Mukraen ...	
	" Sooltangeunge ...	
	" Umber ...	
Zillah Beerbhoom.	" Sooltanabad ...	Except such detached villages as lie within the general boundaries of pergunnahs not mentioned in this schedule.
	" Godda ...	
	" Umloo Mooteah ...	
	" Pussye ...	
	" Hendwa ...	
	Tuppeh Munecharee ...	
	" Belputta ...	
	Pergunnah Pubbia ...	
	Tuppeh Saruth Deoghur ...	
	" Kundit Kurayeh ...	
	" Mohumdabad ...	Except such detached villages as lie within the general boundaries of pergunnahs not mentioned in this schedule.
	Such part of Pergunnah Durreen Molissur as lies north of the Chilla or Chundun Ghat Nullah. ...	

Such detached portions of other Pergunnahs and Tuppehs as lie within the general boundaries of any of the abovementioned Pergunnahs and Tuppehs.

Such portions of Pergunnahs belonging to Maldah and Purneah below the village of Khederpore, in Pergunnah Telecaghuree, as are now or may hereafter be situate on the right bank of the main stream of the Ganges.

C. BERNARD,

Offg. Secy. to the Govt. of Bengal.

The following Orders issued by the Government of India, in the Home Department, are republished for general information :—

No. 1429.—*Fort William, the 25th March 1872.*—*Notifications.—Public.*—His Excellency the Governor General is pleased to confer upon Rajah Jotendro Mohun Tagore, Bahadoor, the privilege of the private entrée to Government House.

No. 1506.—*The 28th March 1872.*—The services of Surgeon John Elliott, M.D., appointed to the joint medical charge of Simla in Notification No. 5468, dated the 13th December last, are replaced at the disposal of the Government of Bengal.

The following Order issued by the Government of India, in the Foreign Department, is republished for general information :—

No. 641 G.—*Fort William, the 28th March 1872.*—*Notification.—General.*—His Excellency the Viceroy and Governor General is pleased to confirm Lieutenant-Colonel (Brevet-Colonel) A. R. Thornhill in the appointment of Agent to the Governor General at Moorshedabad, in the room of Mr. W. B. Buckle, resigned.

C. BERNARD,

Offg. Secy. to the Govt. of Bengal.

NOTIFICATION.

The 28th March 1872.—To remove any doubts that may exist as to the proper jurisdiction in cases of crime or accident occurring on the river Hooghly outside the limits of the port of Calcutta, the Lieutenant-Governor of Bengal is hereby pleased to notify that so much of the river below Calcutta as is not included within the

limits of the port is attached to the district of the 24-Pergunnahs; and it is further notified that the jurisdiction over this part of the river, down to the commencement of the Diamond Harbour sub-division, (the most northerly point of which on the river bank is the Byde Khallee village) is vested in the Magistrate of the 24-Pergunnahs, or the officer in charge of the head-quarters sub-division, when such an arrangement exists, and the jurisdiction in the remaining portion of the river to the sea is vested in the sub-divisional officer at Diamond Harbour.

Crimes and accidents on the part of the river above defined should be made to the Magistrate having jurisdiction, as well as to the nearest police station.

C. BERNARD,

Offg. Secy. to the Govt. of Bengal.

Public Works Department,—Bengal.

ESTABLISHMENT.

No. 123.

The 28th March 1872.

Transfer.—Baboo Gopaul Chunder Banerjee, Overseer, First Grade, from the Rajshahye to the Gya Division.

No. 124.

Notifications.—Mr. F. Hutchinson, Assistant Controller, Third Grade, joined the Central Office of Accounts, Bengal, on the 12th February 1872, before noon.

No. 125.

The privilege leave for two months allowed to Baboo Issen Chunder Sircar, Supervisor, First Grade, attached to the First Presidency Division, in this Department Notification No. 412, dated 20th December 1871, is cancelled.

No. 126.

Appointment.—Private J. Withey, Probationary Overseer, First Grade, attached to the Bhaugulpore Division, is permanently appointed to the Upper Subordinate Establishment in that Grade.

No. 127.

Leave of Absence.—Mr. R. O'Flaherty, Apprentice Engineer, attached to the Circular and Eastern Canals Division, for three months on private affairs, without pay, under Section 9 of Supplement F to Civil Leave Code.

No. 128.

Baboo Surrut Chunder Sandle, Overseer, Third Grade, attached to the Gya Division, for six months on private affairs, without pay, under the above Rules.

No. 129.

Baboo Behary Lall Mozumdar, Overseer, Third Grade, attached to the Sylhet Division, is allowed privilege leave for three months, under Section 12 of Supplement F to Civil Leave Code.

No. 130.

The 1st April 1872.

Notifications.—Lieutenant-Colonel J. J. Hume, s.c., Superintending Engineer, Third Grade, resumed charge of the Western Circle on return from privilege leave on the 27th March 1872, before noon.

No. 131.

Captain C. N. Judge, R.E., Executive Engineer, Second Grade, resumed charge of the Darjeeling Division on return from privilege leave on the 22nd March 1872, before noon.

No. 132.

Leave of Absence.—Baboo Koylas Chunder Mookerjee, Accountant, Fourth Grade, attached to the Gya Division, is allowed privilege leave for two months, under Section 12 of Supplement F to Civil Leave Code.

H. LEONARD, C.E.,

Offg. Secretary to the Govt. of Bengal,
P. W. D.

Irrigation.

ESTABLISHMENT.

NOTIFICATION.

No. 76.

The 2nd April 1872.

The Lieutenant-Governor is pleased to make the following promotions in the Irrigation Branch of the Public Works Department, Bengal, with effect from the 1st March 1872:—

ENGINEER ESTABLISHMENT.

To be Executive Engineer, First Grade.

Captain J. M. Heywood, R.E., Executive Engineer, Second Grade.

To be Executive Engineer, Second Grade.

Mr. J. Whitfield, C.E., Executive Engineer, Third Grade.

To be Executive Engineers, Third Grade.

Mr. T. B. Stoney, C.E., Executive Engineer, Fourth Grade.

Mr. A. J. Hughes, C.E., Executive Engineer, Fourth Grade.

To be Assistant Engineers, First Grade.

Mr. R. B. Buckley, C.E., Assistant Engineer, Second Grade.

Mr. C. E. Livesay, Assistant Engineer, Second Grade.

Mr. A. H. Apjohn, C.E., Assistant Engineer, Second Grade.

Mr. J. F. Williamson, Assistant Engineer, Second Grade.

UPPER SUBORDINATE ESTABLISHMENT.

To be Sub-Engineer, First Grade.

Mr. J. G. Pew, Sub-Engineer, Second Grade.

To be Sub-Engineer, Second Grade.

Mr. T. Fouracres, Sub-Engineer, Third Grade.

To be Supervisors, Second Grade.

Moonshee Peetoo Khan, Overseer, First Grade.

Mr. J. M. Junior, Overseer, First Grade.

To be Overseer, First Grade.

Baboo Mohesh Chunder Mitter, Overseer, Second Grade.

To be Overseers, Second Grade.

Baboo Bhobany Churn Mookerjee, Overseer, Third Grade.

Baboo Likhun Chunder Chatterjee, Overseer, Third Grade.

Baboo Radhamadhub Mookerjee, Overseer, Third Grade.

Baboo Roodroprosunno Singhee, Overseer, Third Grade.

LOWER SUBORDINATE ESTABLISHMENT.

To be Sub-Overseer, Second Grade.

Baboo Gopeenath Chowdry, Sub-Overseer, Third Grade.

No. 77.

Mr. T. Harris, Temporary Overseer, First Grade, attached to the Brahminnee Division, is permanently appointed to the Public Works Department in that Grade.

No. 78.

The 2nd April 1872.

The appointment of Mr. T. Phillips as Temporary Supervisor, First Grade, in the Irrigation Branch, Public Works Department, Bengal, is hereby cancelled.

No. 79.

Lieutenant-Colonel J. F. Tennant, Executive Engineer, First Grade, on special duty, is allowed privilege leave for three months, under Chapter VI., Section 18 of the Civil Leave Code.

No. 80.

Transfer.—Mr. J. G. Pew, Sub-Engineer, First Grade, from the Patna Division to the Cossye Division.

Mr. Pew will be employed on Survey duty under the orders of the Collector of Midnapore, until further orders.

G. A. SEARLE, Lieut.-Col., S.C.,
for Offg. Joint-Secy. to the Govt. of Bengal,
in the P. W. D., Irrigation Branch.

High Court Notices.

Circular Orders by the High Court of Judicature at
Fort William in Bengal.

No. 8.

To all Civil and Criminal Authorities, Lower Provinces,—
(dated Calcutta, the 6th March 1872.)

A COPY of the Minute recorded by His Honor
the Lieutenant-Governor, under date the 4th

HIGH COURT, &c.,
CIVIL AND CRIMINAL.
Present:
The Hon'ble Sir H. Couch, Kt.,
Chief Justice.
The Hon'ble G. Loch.
" Louis S. Jackson.
" E. Jackson,
Judges of the Court.

tive to the use of the
Vernacular language in
public Offices) having
been communicated to
the High Court, the
Court are pleased to call the attention of Civil
and Criminal Judges and Magistrates of all
grades to the Circular Order No. 16, dated 3rd
June 1864.

2. The Court consider it essential, in order to
the inferior tribunals attaining their full measure
of usefulness, that the language of those tribunals
should be that of the great bulk of the people
within their jurisdictions, and that the belief and
practice to the contrary should be steadily dis-
couraged.

3. Pleaders and Mooktars who practise in the
local Courts should be enjoined to abstain from
the employment of foreign terms for which the
Vernacular possesses equivalents in daily use,
and to draft petitions and other documents in
such language as their clients can readily com-
prehend.

4. The proceedings of the Courts, with the
exception of those technical words which are of
necessary occurrence, should be composed in a
style such as would be adopted by persons of
good education resident in the district.

5. A special caution is necessary as to the
recording of oral testimony. It is too common a
practice with mohurirs and other persons em-
ployed on this duty, instead of taking down the
actual words in the witness (as nearly as a simple
adherence to grammar will permit) to render, as
it were, what he has said, into language which the
writer considers elegant or appropriate, that is to
say, into the Court jargon. In this way not
only is the witness, if an ignorant person, per-
plexed when his supposed statement is afterwards
read over to him, but from one witness being
made to speak exactly like another, all charac-
teristics of distinct testimony are lost, and the
evidence, when afterwards referred to, loses much
of its effect.

6. The Court are quite aware that that which
they now require is not to be easily done; but
will require patient and vigilant attention on the
part of Judges of all grades. The acquired habits
and traditions of years are not to be readily
subverted, and the best chance of success will
probably be found to lie in enlisting the aid of
ministerial officers and pleaders of the higher
classes, and of the greatest intelligence.

By order of the High Court,

F. B. PEACOCK,
Registrar.

Departmental Notices.

Notification.

ASSISTANT COLLECTOR MR. LEONARD CHARLES
ABBOTT has been placed in charge of the Nuddea
Treasury, and authorized to draw bills on other
public treasuries.

H. A. COCKERELL,
Offg. Commissioner.

COMM'R.'S OFFICE, PRESIDENCY DIVN.,
The 11th March 1872.

Notification.

BABOO RUNGO LALL BANERJEE, Deputy Collec-
tor, has been placed temporarily in charge of the
Hooghly Treasury, and is authorized to draw
bills on other treasuries.

C. T. BUCKLAND,
Commissioner.

COMM'R.'S OFFICE, BURDWAN DIVN.,
The 14th March 1872.

Notification.

DEPUTY COLLECTOR BABOO NUNDKISSORE DASS
has been placed in charge of the Pooree Treasury,
and authorised to draw bills on all other
treasuries.

T. E. RAVENSHAW,
Commissioner.

ORISSA COMMISSIONER'S OFFICE,
The 8th March 1872.

Notification.

MR. EXTRA ASSISTANT COMMISSIONER R. LEA
has been placed in charge of the Durrung Treas-
ury, and is authorized to draw bills on other
treasuries.

H. HOPKINSON,
*Governor General's Agent, N. E. F.,
and Commissioner of Assam.*

GOWHATTY,
The 4th March 1872.

Notice.

DEPUTY COLLECTOR BABOO MADHAB CHUNDER
MAITRO has been placed in charge of the Bograh
Treasury, and authorized to draw bills from other
treasuries.

E. W. MOLONY,
Commissioner.

COMM'R.'S OFFICE, RAJSHAHYE DIVN.,
CAMP BUGWAH,
The 14th March 1872.

Notice.

BABOO RUTTON LALL GHOSH, Deputy Collector,
has been placed in charge of the Tipperah
Treasury, and authorized to draw bills on other
treasuries.

H. HANKEY,
Offg. Commissioner.

COMM'R.'S OFFICE, CHITTAGONG,
The 16th March 1872.

Nuddea Rivers.

Weekly Water Report showing the least depth of water in the Bhagiruttee River for the week ending Friday, the 29th March 1872.

NAMES OF PLACES, &c.	Least depth of Water.	REMARKS.
	Ft. In.	
On the Entrance Bar ...	4 3	
FROM		
Thence to Jungipore, 9 miles	4 0	
FROM		
Jungipore to Berhampore, 47 miles.	3 0	
FROM		
Berhampore to Cutwa, 50 miles.	3 0	
FROM		
Cutwa to Nuddea, 46 miles...	3 6	

Height of water on guage at Berhampore on the 31st March 1872 above zero 4 feet 1½ inches.

T. H. WICKES, C.E.,

Exe. Engr., Nuddea (Local) Rivers Division.

BERHAMPORE,
The 1st April 1872.

Nuddea Rivers.

Weekly Water Report shewing the least depth of water in the Bhagiruttee River for the week ending Friday, 22nd March 1872.

NAMES OF PLACES, &c.	Least depth of Water.	REMARKS.
	Ft. In.	
On the Entrance Bar ...	4 6	
From thence to Jungipore, 9 miles ...	4 0	
From Jungipore to Berhampore, 47 miles ...	3* 0	* In one place only.
From Berhampore to Cutwa, 50 miles ...	3 0	
From Cutwa to Nuddea, 46 miles ...	3 6	

Height of water on guage at Berhampore on the 25th March 1872 above zero 4 feet 3½ inches.

T. H. WICKES, C.E.,

Exe. Engr., Nuddea (Local) Rivers Division.

BERHAMPORE,
The 26th March 1872.

Sheriff's Office, the 5th March 1872.

NOTICE is hereby given that the Third Criminal Session of the year 1872 of the High Court of Judicature at Fort William in Bengal, for the Town of Calcutta and Factory of Fort William, and the places subordinate thereto, will be holden at the Court House, in the Town Hall of Calcutta, on Thursday, the Fourth day of April next, at 11 o'clock in the forenoon, and so on from day to day until the said Session be over. And it is hereby proclaimed that all persons who will prosecute any of the prisoners to be brought up for trial at the said Session be then and there to prosecute.

JOHN COWIE,
Sheriff.

সদরিক আফিস ১৮৭২ সাল ৫ মার্চ।

সকলকে সমাচার দেওয়া যাইতেছে যে সুবে বাঙ্গালার কোর্ট উইলিয়ম দুর্গের অধীন শহর কলিকাতার ও অন্যান্য স্থানের কোজদারী বিচার নিষ্পত্ত্য জন্য আগামি ৪ আপ্রিল বৃহস্পতিবার বেলা ১১ ঘটিকার সময় এবং যে পর্যন্ত সেশিয়ানের কার্য শেষ না হয় প্রতিদিন উক্ত সময়ে কলিকাতার টৌনহালে হাই কোর্টের আদালত ঘরে সন ১৮৭২ সালের তৃতীয় ক্রিমিনেল সেশিয়ান বসিবেক এবং এতদ্বারা প্রচার করা যাইতেছে যে, যে সকল ব্যক্তি কোন কয়েদীর বিরুদ্ধে কোজদারী মিছিল করিবেক তাহারা উক্ত স্থানে ঐ সময়ে হাজির থাকিয়া মোকদ্দমা করে ইতি সন ১৮৭২ সাল তারিখ ৫ মার্চ।

JOHN COWIE,
Sheriff.

Notice.

No. 215C.

SEALED TENDERS are hereby invited for the supply of iron clamps for the opium chests of the Behar Agency of the season 1871-72.

The tenders will be received in the Office of the Secretary to the Board of Revenue up to 2 o'clock P.M. of the 15th April 1872. All particulars as to time and place of delivery, as well as the quantity, description, and quality of the article, being obtainable by personal application at the said Office.

The party or parties whose tender may be accepted will have to enter into an engagement, and, as security for its fulfilment, to deposit with the Board such amount as they may think proper to demand.

The Board reserve to themselves the right of rejecting any tender without assigning any reason for doing so.

By order of the Board of Revenue, L.P.,

T. B. LANE,
Secretary.

BOARD OF REV., L.P.; FORT WILLIAM,
The 28th March 1872.

No. 212C.
Notification.

It is hereby notified for general information that the Government of India has determined not, under any circumstances, to sell, in the calendar year 1873, more than 48,000 chests of provision opium. Within that maximum amount it is as yet uncertain what quantity will be offered for sale.

By order of the Member in charge,
T. B. LANE,
Secretary.

BOARD OF REVE., FORT WILLIAM,
The 28th March 1872.

Opium Notification.

No. 140C.

NOTICE is hereby given that the Fourth Sale of Opium, the provision of 1870-71, will be held at the Government Opium Sale-room, No. 2, Bankshall Street, on Wednesday, the 3rd April 1872, at 11 A.M., and will comprise 3,575 Chests, viz. :—

Behar Opium	...	...	2,000
Benares ditto	...	...	1,575

Total Chests	...	...	3,575
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2. The general conditions of the sale now advertized will be the same as usual: they may be ascertained by reference to the Notification issued on the 10th November 1871, and published in the *Government and Exchange Gazettes*, or on personal application at the office of the Board of Revenue.

3. The latest dates for deposit and clearance will be the 8th and 18th April respectively; that is to say, no Bank of Bengal Receipts, Government Promissory Notes, or other Public Securities that may be tendered for deposit in redemption of Promissory Notes given by purchasers in the sale-room, will be received after 4 P.M. of Monday, the 8th April 1872, and no Bank of Bengal Receipts in full payment of lots will be accepted after 4 P.M. of Thursday, the 18th April 1872.

4. In addition to the quantity above advertized for sale, the following quantities more or less of Behar and Benares Opium will be brought to sale in the present year on or about the dates specified below. The Member in charge of the Opium Department, however, reserves to himself the right of altering these dates should circumstances render it expedient to do so :—

Dates.	Behar about Chests.	Benares about Chests.	Total about Chests.
On or about Monday, 6th May 1872	2,000	1,575	3,575
On or about Thursday, 6th June "	2,000	1,575	3,575
On or about Thursday, 4th July "	2,000	1,575	3,575
On or about Monday, 5th Aug. "	2,000	1,575	3,575
On or about Thursday, 5th Sept. "	2,000	1,575	3,575
On or about Tuesday, 1st Oct. "	2,000	1,575	3,575
On or about Wednesday, 6th Nov. "	2,000	1,575	3,575
On or about Thursday, 5th Dec. "	2,000	1,575	3,575
Total chests	16,000	12,600	28,600

By order of the Member in charge.
T. B. LANE,
Secretary.

BOARD OF REV., FORT WILLIAM,
The 26th February 1872.

Opium Notification.

No. 217C.

NOTICE is hereby given that the Fifth Sale of Opium, the provision of 1870-71, will be held at the Government Opium Sale-room, No. 2, Bankshall Street, on Monday, the 6th May 1872, at 11 A.M., and will comprise 3,575 Chests, viz. :—

		Chests.
Behar Opium	...	2,000
Benares "	...	1,575
Total Chests	...	3,575

2. The general conditions of the sale now advertized will be the same as usual: they may be ascertained by reference to the Notification issued on the 10th November 1871, and published in the *Government and Exchange Gazettes*, or on personal application at the Office of the Board of Revenue.

3. The latest dates for deposit and clearance will be the 11th and 21st May respectively; that is to say, no Bank of Bengal Receipts, Government Promissory Notes, or other Public Securities that may be tendered for deposit in redemption of Promissory Notes given by purchasers in the sale-room, will be received after 4 P.M. of Saturday, the 11th May 1872, and no Bank of Bengal Receipts in full payment of lots will be accepted after 4 P.M. of Tuesday, the 21st May 1872.

4. In addition to the quantity above advertized for sale, the following quantities more or less of Behar and Benares Opium will be brought to sale in the present year on or about the dates specified below. The Member in charge of the Opium Department, however, reserves to himself the right of altering these dates, should circumstances render it expedient to do so :—

Dates.	Behar about Chests.	Benares about Chests.	Total about Chests.
On or about Thursday, 6th June 1872	2,000	1,575	3,575
On or about Thursday, 4th July "	2,000	1,575	3,575
On or about Monday, 5th August "	2,000	1,575	3,575
On or about Thursday, 5th Sept. "	2,000	1,575	3,575
On or about Tuesday, 1st October "	2,000	1,575	3,575
On or about Wednesday, 6th Nov. "	2,000	1,575	3,575
On or about Thursday, 5th Dec. "	2,000	1,575	3,575
Total Chests	14,000	11,025	25,025

By order of the Member in charge,
T. B. LANE,
Secretary.

BOARD OF REV., FORT WILLIAM,
The 2nd April 1872.

Notification.

NOTICE is hereby given that the wastage allowance on cargoes of salt imported from Europe in steamers *via* the Suez canal has been fixed at five per cent.

The terms of this notification will be enforce from 1st August 1872.

By order of the Member in charge of Salt.

J. A. CRAWFORD,
Collector of Customs.

CALCUTTA CUSTOM HOUSE,
The 21st March 1872.

NOTICE.

THE following Packages landed from the undermentioned Ships are lying unclaimed at the Custom House. If the Goods are not cleared on or before the dates stated against each item, they will be sold, under Section 57 of Act VI. of 1863, for the realization of duty, wharfage, and other charges:—

Date of Sale.	Mark or Address of Packages.	Ships.
1872, April 6th ...	27 Cases, M Y	... Deccan.
" 6th ...	{ A quantity of old rope, 14 empty tins... } no mark	Misser.
" 6th ...	{ A quantity of old blocks	
" 20th ...	8 Packages, C P J	... China.
" 20th ...	2 Cases, [W. G. W. & Co.]	... Delhi.
" 20th ...	1 Case, Craigie, Esq.	... Ditto.
" 20th ...	1 Case, R. G. Craigie, Esq.	... Ditto.
" 20th ...	1 Robbin, S S	... Asia.

CALCUTTA CUSTOMS,
The 2nd April 1872.

J. A. CRAWFORD, *Collector of Customs.*

NOTICE.

THE following Packages have been landed at the Custom House from the undermentioned Ships under the provisions of Section 52 of Act VI. of 1863. If the Goods are not cleared before the dates stated against each item, they will be sold for the realization of duty, wharf rent, and other charges, under Section 56 of Act VI. of 1863:—

1872, May 22nd ...	6 Cases, [C] Calcutta	... Nagpore.
" 22nd ...	32 Cases, [X]	... Ditto.

CALCUTTA CUSTOMS,
The 2nd April 1872.

J. A. CRAWFORD, *Collector of Customs.*

Commissioners for making Improvements in the Port of Calcutta.

NOTICE.

UNDER SECTION 69 OF ACT V. (B.C.) OF 1870.

THE following Packages landed at the Jetties from the undermentioned Ships have been removed to the Commissioners' Import Warehouse, where they remain at the risk and expense of the owners. If not cleared within two months from the date stated against each item, they will be sold under Section 72 of the said Act:—

Date of removal to Import Warehouse.	No., mark, and description.	Consignees.	Ships.
1872.			
Mar. 23rd ...	2 Cases, [60] A. B. & Co.	... Order	... S. S. Bertha.
" 23rd ...	2 Cases, [A W N]	... "	... Ditto.
" 23rd ...	1 Case, [A R] A. B. & Co.	... Abdool Rohoman	... Ditto.
" 23rd ...	1 Case, addressed	... Captain Beddy, care of Colvin, Cowie & Co.	... Ditto.
" 23rd ...	2 Cases, addressed	... Ditto ditto	... Ditto.
" 23rd ...	9 Packages, [B. T. & Co.] N T	... Williamson, Magor & Co.	... Ditto.
" 23rd ...	1 Sample, addressed	... Alfred D. Burke, Esq...	... Ditto.
" 23rd ...	5 Cases, [B D S] A B	... Order	... Ditto.
" 23rd ...	1 Sample, [C. C. & Co.]	... "	... Ditto.
" 23rd ...	1 Case, [D] M	... "	... Ditto.
" 23rd ...	2 Cases, [A D M B] A. B. & Co.	... "	... Ditto.
" 23rd ...	1 Case, D J Z	... Arlington & Co.	... Ditto.
" 23rd ...	1 Case, [98] E D J	... Order	... Ditto.
" 23rd ...	1 Case, J. M. & Co.	... "	... Ditto.
" 23rd ...	1 Case, [M] R A	... "	... Ditto.
" 23rd ...	3 Cases, [M S M I] A B	... "	... Ditto.
" 23rd ...	1 Case, addressed	... H. D. Mackenzie & Co.	... Ditto.
" 23rd ...	2 Cases, [M E M Y] A B	... Order	... Ditto.
" 23rd ...	50 Drums, [N]	... "	... Ditto.
" 23rd ...	10 Cases, N P C	... "	... Ditto.
" 23rd ...	6 Cases, [P] S. & Co.	... "	... Ditto.
" 23rd ...	1 Package or sample, addressed	... Petrochochino Brothers.	... Ditto.
" 23rd ...	8 Cases, [R B]	... Colvin, Cowie & Co.	... Ditto.
" 23rd ...	1 Case, T B	... Order	... Ditto.
" 23rd ...	6 Cases, W. L. A. & Co.	... "	... Ditto.

CALCUTTA,
The 1st April 1872.

W. D. BRUCE, *Vice-Chairman.*

Notification under Section 64 of Act V (B.C.) of 1870.

THE Commissioners for making Improvements in the Port of Calcutta, with the sanction of the Lieutenant-Governor of Bengal, do hereby declare that the wharf on the east bank of the river Hooghly, extending from Colvin's Ghât on the North to Chandpaul Ghât on the South, is ready for receiving, landing, and shipping goods, from and upon vessels not being sea-going vessels, and order that within the limits of that portion of the Port of Calcutta situated between Tolly's Nullah on the South and Ahereetollah Ghât on the North, it shall not be lawful to land or ship any goods out of or into vessels of the class above specified, other than those hereinafter excepted, except at the aforesaid wharf or at the wharf extending from Ahereetollah Ghât on the North to Juggurnauth Ghât on the South, or at the wharf between No. 6 Jetty on the North and Colvin's Ghât on the South, or at the wharf between the Mint premises on the North and Mullick's Ghât on the South.

The above order shall not be held to apply, until further notification, to inland steamers or to boats laden with bamboos, hay, straw, vegetables, fruit, meat, and market produce; such goods can be landed at the public ghâts under any rules and restrictions at present or hereafter in force thereat.

(True copy.)

G. H. SIMMONS,

Secretary.

(1152—3)

CALCUTTA,
The 19th March 1872.

List of Remaining and Unclaimed Letters accumulated in the Calcutta Post Office during the week ending 30th March 1872.

Braham, Mrs. H.	Neopold, A.
Bruce, D.	Netriano, J.
Benjamin, J.	Nisbett, Mrs.
Begg, D.	Palmer, E. W.
Brown, E.	Parker, E. H.
Brass, G.	Rawson, S.
Boon, D.	Ronald, Mrs. E. M.
Clarke, C. W.	Rodrick, J.
Curtis, T. B.	Raphael, J. H.
Christoper, E. C.	Robertson, R. D.
Crabbe, H. J.	Richardson, Mr. J.
Constable, E. A. B.	Stewart, Capt. R. C.
Cutbell, H. D.	Smith, Thos.
Calloden, A.	Saunders, Mrs. C.
Dalton, G. J. B. T.	Shave, W.
DeRozario, G. R.	Shiels, Mrs. J. M.
Egan, W.	Showers, Col. C. S.
Frukleton, W.	Sweaton, R.
Freig, Mrs.	Tanner, Major H. C.
Fawler, Mrs.	Thompson, P. J.
Gomes, F.	Tonkin, E.
Grant, J. W.	Thacker, W., Staff Surgeon.
Gopeenath Chatterjee & Co.	Trotter, T.
Henry, Mrs. N.	Taylor, G.
Hickey, Mrs. H. S.	Warner, T.
Harvey, E. H.	Warnaud, Lt. Col.
Inglis, F.	Wilkinson, J. B.
Makgill, G. E.	Wilson, J.
Marshall, C. H.	

W. H. MCGOWAN,
Post-master of Calcutta.

Postal Notice.

In order to avoid detention at Galle of the English mail for Australia it has been arranged that the mail packet for Australia shall leave Galle immediately after the steamer from Suez arrives at that place. The mail packet for Australia will thus ordinarily leave Galle before the mail packet timed to start from Bombay on Tuesday (or Monday in the monsoon season) reaches Galle; and it has therefore been arranged that an extra steamer shall leave Bombay every fourth Saturday (afternoon) commencing with Saturday, the 6th April. All correspondence posted in India for Australia will therefore be forwarded *via* Bombay by this extra packet.

H. A. BROWN,
For Offg. Dy. Dir.-Genl. of
the Post Office of India.

Calcutta, 26th March 1872.

Postal Notice.

SEA AND OVERLAND MAILS.

For	Box closes at	Date.	Per Steamer
Rangoon and Moulmein ...	7 P.M.	7th April	Scotia.
Chittagong, Akyab, Kyauk Phyoo, and Sandoway.	7 "	7th "	Penang.
Guadar, Muscat, Bunder Abbas, Linga, Bushire, Bagdad, and Bussorah.	7 "	8th "	
Madras and Ceylon ...	7 "	10th "	Khedive.
Gopaulpore, Bimlipatam, Vizagapatam, Coconada, Madras, Negapatam, Galle, Colombo, Tuticorin, Alleppy, Cochin, Bep- pore, Calicut, Tellee- cherry, Cannanore, Man- galore, and Bombay.	7 "	10th "	Arabia.
Australian Colonies ...	7 "	3rd "	

The next Overland Mail *via* Bombay will close on Friday, the 5th April 1872.

2. Book Post and Pattern Packets must be posted on the 4th.

N.B.—The letter box will close at 7 P.M. precisely, after which hour Overland letters fully prepaid and bearing extra postage stamp of two annas on each cover will be received up to 7.30 P.M., or bearing an extra postage stamp of four annas on each cover up to 8 P.M., and after 8 up to 9 P.M., by a Post Office Clerk at the East Indian Railway Station, Armenian Ghât.

W. H. MCGOWAN,

CALCUTTA,
The 2nd April 1872.

Post-Master.

Notification.

GOVERNMENT SIMLA PASSENGER DAK,
Umballa and Kalka Road.

From the 15th April to the 15th of May 1872, arrangements have been made for booking Express Passenger Daks from Umballa to Kalka, at the Calcutta Post Office,*

* Post-Master's Room, east verandah, between the hours of 10 A.M. and 4 P.M.

under certain rules and conditions, of which a printed copy can be obtained on application to the Post-Master, Calcutta.

It is expected that about twelve Express Daks can be supplied daily, and the charge per dak will be Rs. 30.

From the 15th April, two ordinary vans carrying mails will leave the Umballa Post Office,—one in the morning at or about 6 A. M., and the other in the evening at or about 6 P. M. In each of these vans four seats will be available for passengers (if the weight of the mails admit) at a charge of Rs. 6 per seat.

A. M. MONTEATH,
Dir.-Genl. of the Post Office of India.

CALCUTTA,
The 1st April 1872.

N. B.—For conditions respecting the booking of daks in Calcutta see paragraph 11 of the Rules.

Insolvent Notices.

Court for the Relief of Insolvent Debtors at Calcutta.

In the matter of Sew- } On Saturday, the
churn Ram and Dabee- } 23rd day of March in-
loll, Insolvents. } stant, it was ordered that
Saturday, the 4th day of May next, be appointed
for the further hearing of this matter, and that
unless cause be shown to the contrary on that day,
the said Insolvents be discharged personally, as well
as to their after-acquired property, from all liabilities
for debts, claims, and demands, of and against
the said Insolvents at the time of the filing of
their petition for relief.

Carruthers & Dignam, Attorneys.

In the matter of Rad- } On Monday, the 11th
hakissen Sett, an Insol- } day of March instant,
vent. } by an order of this Court
the said Insolvent was adjudged entitled to his
personal discharge under the Act XI. Vic., cap.
21, as to all persons named in his schedule as
creditors or claiming to be creditors respectively.

W. F. Watson, Attorney.

Chief Clerk's Office, the 26th March 1872.

Notice

Is hereby given that the undermentioned lot of waste land, estimated to consist of about 2,000 acres, more or less, situate in Mouzah Ekorattolly, Mehal Deenjooz, in the district of Luckimpore, and bounded as shown at the foot of this notice, has been applied for under the "rules for the sale of unassessed lands in the Lower Provinces of Bengal (Chapter XXVI of the rules of the Board of Revenue.)" All claims and objections in bar of the sale having been finally disposed of under the provisions of Act XXIII of 1863, the said lot will be put up to sale by auction to the highest bidder above the upset price of Rs. 5 an acre, on the 2nd day of May 1872, at the Office of the Deputy Commissioner of Luckimpore. The sale will be made in the manner, and subject to the conditions prescribed by the rules above cited, and to the provisions of Act XXIII of 1863.

W. C. S. CLARKE,
Deputy Commissioner.

DEPY. COMM'R.'S OFFICE, LUCKIMPORE,
The 1st February 1872.

Lot 1.

Boundaries.

North—Maijan River.
South—Sessa Nuddee and Ryots' Basti lands.
East—Nadooa Grant.
West—Barra Bheel, Farlong Nuddee, and Ryots' cultivated lands.

Notice

Is hereby given that a lot of waste land, consisting of about 718 acres, situate in Mouzah Tingrai, Mehal Tingrai, District of Luckimpore, Assam, and bounded as shown at the foot of this notice, has been applied for under the "rules for the sale of unassessed lands in the Lower Provinces of Bengal (Chapter XXVI of the rules of the Board of Revenue.)" All claims and objections in bar of the sale having been finally disposed of under the provisions of Act XXIII of 1863, the said lot will be put up to sale by auction to the highest bidder above the upset price of Rs. 2-8 an acre, on the 2nd day of May 1872, at the Office of the Deputy Commissioner of Luckimpore, Assam. The sale will be made in the manner, and subject to the conditions prescribed by the rules above cited, and to the provisions of Act XXIII of 1863.

W. C. S. CLARKE,
Dy. Commr., Luckimpore.

DEBROOGHUR DY. COMM'R.'S OFFICE,
The 3rd February 1872.

Lot 1.

Boundaries.

North—Tingrai Nuddee.
South—Baliyan Garden and a Path.
East—Chapori.
West—Tingrai Nuddee.

Notice

Is hereby given that a lot of waste land, consisting of about 157 acres 2 roods and 8 poles, situate in Mouzah Kakorattolly, in the district of Luckimpore, and bounded as shown at the foot of this notice, has been applied for under the "rules for the sale of unassessed lands in the Lower Provinces of Bengal (Chapter XXVI of the rules of the Board of Revenue.)" All claims and objections in bar of the sale having been finally disposed of under the provisions of Act XXIII of 1863, the said lot will be put up to sale by auction to the highest bidder above the upset price of Rs. 2-8 an acre, on the 3rd day of June 1872, at the Deputy Commissioner's Office at Debrooghur. The sale will be made in the manner, and subject to the conditions prescribed by the rules above cited, and to the provisions of Act XXIII of 1863:—

Boundaries.

North—By the Bissakossijan and Suddyah road.
South—By the Hilikhagooryjan.
East—Road to Suddyah.
West—Bissakossijan.

W. C. S. CLARKE,
Deputy Commissioner.

DEPY. COMM'R.'S OFFICE, LUCKIMPORE,
The 29th February 1872.

Notice

Is hereby given that a lot of waste land, consisting of about 748 acres 1 rood and 3 poles, situate in Mouzah Rungagora, in the district of Luckimpore, and bounded as shown at the foot of this notice, has been applied for under the "rules for the sale of unassessed lands in the Lower Provinces of Bengal (Chapter XXVI of the

rules of the Board of Revenue.)" All claims and objections in bar of the sale having been finally disposed of under the provisions of Act XXIII. of 1863, the said lot will be put up to sale by auction to the highest bidder above the upset price of Rs. 2-8 an acre, on the 3rd day of June 1872, at the Deputy Commissioner's Office at Debrooghur. The sale will be made in the manner, and subject to the conditions prescribed by the rules above cited, and to the provisions of Act XXIII. of 1863:—

Boundaries.

North—Moree Dibroo and Dibroo River.
South—Forest Jungle and Grant No. I.
West—Dinjan.
East—Theeka Disoyjan.

W. C. S. CLARKE,
Deputy Commissioner.

DEPY. COMM'R.'S OFFICE, LUCKIMPORE,
The 29th February 1872.

Notice

Is hereby given that a lot of waste land, consisting of about 513 acres 1 rood, situate in Mouzah Bogdome, in the district of Luckimpore, and bounded as shown at the foot of this notice, has been applied for under the "rules for the sale of unassessed lands in the Lower Provinces of Bengal (Chapter XXVI. of the rules of the Board of Revenue.)" All claims and objections in bar of the sale having been finally disposed of under the provisions of Act XXIII. of 1863, the said lot will be put up to sale by auction to the highest bidder above the upset price of Rs. 2-8 an acre, on the 3rd day of June 1872, at the Deputy Commissioner's Office at Debrooghur. The sale will be made in the manner, and subject to the conditions prescribed by the rules above cited, and to the provisions of Act XXIII. of 1863:—

Boundaries.

North—By the Moree Dibroo.
South—Grass Jungle.
East—Road to Rungagora and Dinjan River.
West—Law Jam and road to Debrooghur.

W. C. S. CLARKE,
Deputy Commissioner.

DEPY. COMM'R.'S OFFICE, LUCKIMPORE,
The 29th February 1872.

Notice.

Lot No. 8.

NOTICE is hereby given that a lot of waste land, estimated to consist of about 63 acres, more or less, situated in Mouzah Solall, Zillah Nowgong, Assam, and bounded as shown at the foot of this notice, having been applied for under the "rules for the sale of unassessed waste lands in the Lower Provinces of Bengal," will be put up to sale by auction to the highest bidder above the upset price of Rs. 5 per acre on the 17th day of June 1872, at the Office of the Deputy Commissioner of Nowgong, Assam, should no objection be preferred such as to render it necessary to defer the sale under the provisions of Act XXIII. of 1863. The sale will be made in the manner,

and subject to the conditions prescribed by the rules above cited, and to the provisions of Act XXIII. of 1863:—

Boundaries.

North, Roopeet land; South, Chekoni Purbut; East, jungle and Paneebhola tree; West, Chekonee Jooree and Paneebhola tree.

J. SHERER,
Deputy Commissioner.

NOWGONG, ASSAM,
The 31st January 1872.

Notice.

Lot No. 9.

NOTICE is hereby given that a lot of waste land, estimated to consist of about 112 acres, more or less, situated in Mouzah Solall, Zillah Nowgong, Assam, and bounded as shown at the foot of this notice, having been applied for under the "rules for the sale of unassessed waste lands in the Lower Provinces of Bengal," will be put up to sale by auction to the highest bidder above the upset price of Rs. 5 per acre on the 17th day of June 1872, at the Office of the Deputy Commissioner of Nowgong, Assam, should no objection be preferred such as to render it necessary to defer the sale under the provisions of Act XXIII. of 1863. The sale will be made in the manner, and subject to the conditions prescribed by the rules above cited, and to the provisions of Act XXIII. of 1863:—

Boundaries.

North, jungle and Mr. Haxell's grant under ordinary cultivation lease; South, jungle and Paneebhola tree; East, Chekonee Purbut; West, Dullung Jooree.

J. SHERER,
Deputy Commissioner.

NOWGONG, ASSAM,
The 31st January 1872.

Notice

Is hereby given that a lot of waste land, estimated to consist of about 150 acres, more or less situated in Mouzah Rungamatee, Zillah Seeksagur, and bounded as shown at foot of this Notice, having been applied for under the "Rules for the sale of unassessed waste lands in the Lower Provinces of Bengal," will be put up to sale by auction to the highest bidder, above the upset price of two rupees and eight annas per acre, on the 17th June 1872, at the Office of the Deputy Commissioner of Seeksagur, should no objection be preferred such as to render it necessary to defer the sale under the provisions of Act XXIII. of 1863. The sale will be made in the manner and subject to the conditions prescribed by the rules above cited, and to the provisions of Act XXIII. of 1863.

Boundaries of Lot.

North, Gela Bheel; South, Gur Allee; East, by a line drawn at right angles from the Gur Allee, where a pillar will be raised to the Gela Bheel, distant 3,600 feet; West, a line parallel to the eastern boundary and distant 1,800 feet from it.

A. C. CAMPBELL, *Major,*
Deputy Commissioner.

ZILLAH SEEKSAGUR, DY. COMM'R.'S OFFICE,
The 20th December 1871.

CURRENCY NOTES.

THE following Currency Notes of the Government of India, Calcutta Circle, are stated to have been lost, and payment of their value has been claimed by the persons whose names are placed against the numbers; any other person having these Notes in his possession, or claiming a right to them, is warned to communicate at once with the undersigned:—

Notes wholly lost or destroyed.

Register No.	No. of Notes.	Value.	Name of Claimant.
		Rs.	
4593	^A / _U 99801	} 10 ea.	Gunesh Chunder Roy.
	" 99804		
	" 99805		
	" 99802		
	^A / _U 95507		
	^A / _U 04227		
	" 42226		
	" 04224		
4593	^A / _U 18456		
	" 99576		
	^A / _U 00112	} 10 ea.	Gunesh Chunder Roy.
	^A / _U 04226		
	^A / _U 46118		
	^A / _U 19530		
	^A / _U 50355		
	^A / _U 41221		
	^A / _U 14677		
	^A / _U 04219		
	" 39174		
	^A / _U 27514		
	" 27517	} 20 ea.	Gunesh Chunder Roy.
	" 27515		
	" 27516		
	" 27513		
	" 27545		
	" 27510		
	" 26132		
	" 26133		
	" 26134		
	" 26135		
	" 26136		
	^A / _U 65021	} 20 ea.	Gunesh Chunder Roy.
	^A / _U 26118		
	" 26119		
	^A / _U 65839		
	" 65838		
	" 65879		
	^A / _U 40370		
	" 40436		
	" 40435		
	" 40434		
	^A / _U 46858	} 20 ea.	Gunesh Chunder Roy.
	" 75750		
	^A / _U 75757		
	" 75758		
	" 75759		
	" 75760		
	" 13490		
	" 75718		
	" 77199		
	" 75753		
	" 75744	} 20 ea.	Gunesh Chunder Roy.
	^A / _U 06819		
	^A / _U 05325		
	" 09695		
	" 20720		
	" 11033		

Notes wholly lost or destroyed.

Register No.	No. of Notes.	Value.	Name of Claimant.
		Rs.	
	" 45268	} 50 ea.	J. Cornelius.
	" 54713		
	" 53973		
	" 54784		
	" 95927		
	^A / _U 12763	100	The Post-Master General, N. W. P.
4600	^A / _U 66876	100	
4602	^A / _U 41760	100	
4603	^A / _U 30101	} 10 ea.	Hurrydoss Poddar.
	to		
	" 30200		
	^A / _U 56196	} 20 ea.	Hurrydoss Poddar.
	to		
	" 56200		
	" 56751	} 20 ea.	Hurrydoss Poddar.
	to		
	" 56755	} 100	J. D. Freitas.
	^A / _U 86225		
	" 86226		
	" 87536	100	The Dist. Suptd. of Police, Burdwan.
4604	^A / _U 85685	50	
4605	^A / _U 10008	100	Gonesh Chunder Roy.
	" 58516	100	
4607	^A / _U 100000	10	Oddyto Churn Shaw.
4608	^A / _U 74554	100	
4609	^A / _U 75551	1,000	Jetmull Chorodia.
4613	^A / _U 71182	500	
4614	^A / _U 85924	1,000	C. J. Barber.
	" 85925	1,000	
	" 85926	1,000	
	" 91639	1,000	
	" 80185	1,000	
	^A / _U 41664	100	C. F. Pittar.
	" 47694	100	
	" 32802	100	
	" 56317	100	
	" 03812	100	
4617	^A / _U 42092	100	A. O. Smith.
4619	^A / _U 71545	50	
4620	^A / _U 44701	100	Troyluckhonath Doss.
	^A / _U 27132	50	
	^A / _U 13056	10	A. W. Russell.
	^A / _U 30723	10	
4631	^A / _U 74193	100	Sewdial Sooruj Mull.

Notes partially lost or destroyed.

4594	^A / _U 00021	100	Aubus Ally.
4596	^A / _U 49899	10	F. Lemarchaud.
4597	^A / _U 99324	100	Basakharam Hurdial.
4601	^A / _U 01374	100	Messrs. Gillanders, Arbuthnot and Co.
	" 01373	100	
	" 01372	100	
4606	^A / _U 21976	100	Muddon Mohun Sadoo Khan.
	" 00988	100	
	" 97858	100	
	" 26439	100	F. H. Fisher.
	^A / _U 56938	100	
	^A / _U 56836	50	
4610	^A / _U 11243	10	B. L. Booth.
4611	^A / _U 73436	50	
	" 27723	50	
4612	^A / _U 53162	10	E. M. Kinnell.
	^A / _U 33129	10	

Notes partially lost or destroyed.

Register No.	No. of Notes	Value.	Name of Claimant.
		Rs.	
4616	$\frac{A}{B}$ 53007	20	Messrs. D. Rozario and Co.
	95844	20	
4618	$\frac{A}{B}$ 76603	20	The Revd. Father R. Pegotti.
4622	$\frac{A}{B}$ 65418	50	Prosono Coomar Banerjee.
4623	$\frac{A}{B}$ 01865	20	J. Atkinson.
4624	$\frac{A}{B}$ 86114	10	Lall Mohun Doss Bose.
4625	$\frac{A}{B}$ 20121	20	Azeemuddeen Ahmud.
	20122	20	
	20414	20	
	$\frac{A}{B}$ 04914	20	
4626	$\frac{A}{B}$ 48798	10	Pokur Doss.
4627	$\frac{A}{B}$ 36266	20	Bonomally Chatterjee.
4629	$\frac{A}{B}$ 89256	1,000	Ballakeeloll and Bulbudder Pershad.
	86010	1,000	
	89511	1,000	
	73963	1,000	
	81438	1,000	
	86120	1,000	
	86119	1,000	
4630	$\frac{A}{B}$ 81022	10	Lieut. C. S. Bingham.
	$\frac{A}{B}$ 76097	10	
	$\frac{A}{B}$ 91427	10	
4632	$\frac{A}{B}$ 82011	50	Bungsheedhur Sein.
	$\frac{A}{B}$ 82986	50	

Wrongly joined.

4595	$\frac{A}{B}$ 10160	20	Gonesh Chunder Paul.
	10159		
4615	$\frac{A}{B}$ 63907	20	A. Rogers.
	63906		
4628	$\frac{A}{B}$ 73175	50	Purshee Shaikh.
	73174		

L. BERKELEY,

Asst. Commr. of Paper Currency.

PAPER CURRENCY DEPARTMENT,

*The 1st April 1872.**Miscellaneous Advertisements.***Bank of Bengal.**

THE Directors have made the following changes in the Bank's Establishment:—

Mr. A. B. Antram of Head Office has been appointed Acting Agent at Lahore Branch.

Mr. J. Seymour Keay, Agent at Patna, has resigned the Bank's service.

Mr. W. F. Fraser gazetted to Lahore has resumed charge of the Patna Branch as Acting Agent.

GEO. DICKSON,

Secretary and Treasurer.

CALCUTTA,

The 27th March 1872.

(1166—1)

Notice

Is hereby given that certain effects belonging to the estate of the late Mr. G. W. Ferris, a British born subject, who died intestate at Soory, are under the seal of this Court, and will be delivered to any one duly authorized to receive the same.

E. C. CRASTER,

BEERBHOOM,

*The 15th March 1872.**Offg. Judge.*

(1145—3)

Notice.**CALCUTTA MUNICIPALITY.**

THE period for which the assessments of the portions of the Town noted in the margin were made having expired, it is hereby notified that the Justices of the Peace for the Town of Calcutta have, under Section 76 of Act VI. of 1863 (B.C.), adopted the valuations, measurements, and assessments, made on the occasion of the last assessment for the three years next following. The registers containing the aforesaid valuations, measurements, and assessments, can be inspected by owners or occupiers of property at the Office of the Justices.

It is further notified that in accordance with Section 73 of Act VI. of 1863 (B.C.), the Justices will, on the 24th April 1872, at noon, hear any appeals against the said valuations, measurements, and assessments; and any person desirous of appealing against the said valuations, measurements, and assessments, must do so by a written application, which must be left at the Office of the Justices three days before the date fixed for hearing appeals. Under Section 27 of Act VI. (B.C.) of 1866, no appeals can be heard unless the amount of the rate has been deposited with the Justices, and unless such appeals be preferred by the person who, at the time the appeal is made, shall be recorded in the assessment register as the owner or occupier of the premises to which such appeal refers.

G. W. BARTLETT,

Offg. Secy. to the Justices of the Peace.

OFFICE OF THE JUSTICES OF THE PEACE,

NO. 3, CHOWRINGHEE ROAD,

Calcutta, the 1st April 1872.

(1169—1)

Notice.

MR. JAMES DRUMMOND MAXWELL, and also MR. ROBERT McDONALD ROSS and MR. HUGH WALKER TULLOCH, are authorized to sign our firm from this date.

J. NICOL FLEMING AND Co.

CALCUTTA,

The 7th March 1872.

(1144—3)

Eastern Cachar Tea Company, "Limited."

NOTICE is hereby given that the Ordinary General Meeting of the Shareholders of the Eastern Cachar Tea Company, "Limited," will be held at the Office of the Company, No. 14, Old Court House Street, on Saturday, the 13th day of April, at noon precisely.

STEEL, McINTOSH AND Co.,

CALCUTTA,

*The 23rd March 1872.**Agents and Secretaries.*

(1159—3)

**Statement of the Affairs of the Bank of Bengal for the Week ending
26th March 1872.**

LIABILITIES.			ASSETS.		
	Rs.	As. P.		Rs.	As. P.
Proprietors' Capital, paid-up	2,20,00,000	0 0	Government Securities	88,12,333	4 0
Reserve Fund	15,37,450	1 8	Loans on Government Securities at Head Office and Branches	72,82,717	10 6
General Treasury Balance at Head Office	Rs. 3,76,84,083	8 0	Accounts of Credit on Government Securities at Head Office and Branches	1,61,39,911	2 6
General Treasury Balance at Branches	Rs. 2,00,37,632	9 6	Mercantile Bills discounted at Head Office and Branches	1,89,86,643	4 3
Other Deposits at Head Office and Branches	2,06,77,351	1 2	Dead Stock	11,89,108	13 1
Bank Post Bills, &c.	13,18,178	14 1	Stamps	19,929	7 0
Sundries	2,39,059	11 11	Balances with other Banks	7,73,984	0 4
			Sundries	1,30,339	15 2
				8,33,27,859	11 0
			Cash and Currency Notes at Head Office	Rs. 1,56,99,008	3 7
			Cash and Currency Notes at Branches	Rs. 3,51,06,533	14 9
				5,08,05,541	3 4
				10,41,93,761	14 4
	10,41,93,761	14 4			

BANK OF BENGAL.
Calcutta, 28th March 1872.

J. GORDON,
Chief Accountant & Deputy Secretary.

By order of the Directors.
Geo. DICKSON,
Secretary and Treasurer.
(1167—1)

Abel Penn Simkins, deceased.

Statutory notice to creditors.

PURSUANT to the Trustees' and Mortgagees' Powers Act 1866, being Act XXVIII. of 1866 of the Governor-General of India in Council, notice is hereby given that all creditors other than those who have already sent in claims, and other persons having any demands upon or against the estate of Abel Penn Simkins, late of Calcutta, who died at Calcutta aforesaid on or about the twenty-second day of July one thousand eight hundred and seventy-one, and letters of administration of whose property and credits were duly granted to Alfred Edmund Harriess, of Calcutta, Solicitor and the duly constituted Attorney of Abel Joshua Higginbotham, one of the executors named in and appointed by the will of the said deceased by the High Court of Judicature at Fort William in Bengal in its testamentary and intestate jurisdiction on the 23rd day of August one thousand eight hundred and seventy-one, are hereby required to send in writing the particulars of their claims or demands to the undersigned at their Office situate at No. 6, Hastings Street, in Calcutta aforesaid, on or before the first day of May one thousand eight hundred and seventy-two; and notice is hereby also given that at the expiration of the last-mentioned day the said administrator will be at liberty to distribute the assets of the said Abel Penn Simkins, deceased, or any part thereof amongst the parties entitled thereto having regard to the claims of which the said administrator has then had notice, and that the said administrator will not be liable for the assets or any part thereof so distributed to any person of whose claim the said administrator has not had notice at the time of such distribution. Dated this twenty-third day of March one thousand eight hundred and seventy-two.

ROBERT-ON, ORR, HARRISS, & FRANCIS,
Attorneys for the Administrator.
6, Hastings Street, Calcutta. (1163—2)

Notice.

COPIES of Act VII of 1871, the Indian Emigration Act, in Urdu and Hindee, can be obtained on application at the Bengal Secretariat at 8 annas per copy.

To BE SOLD by the Registrar of the High Court of Judicature at Fort William in Bengal, in its Ordinary Original Civil Jurisdiction at the Town Hall, on Saturday, the thirteenth day of April next, at the hour of two o'clock in the afternoon, pursuant to a decree of the said Court, made in suit No. 410 of 1870, wherein Sreemutty Sowdamenee Dossee is the plaintiff, and Albert Birmingham Miller, Official Assignee and Assignee of the estate and effects of one Aga Mahomed Hossein Sherazee is the defendant, dated the seventeenth day of July 1871, the following property, that is to say:—All that upper-roomed messuage, tenement, and premises situate, lying, and being at No. 12, formerly No. 13-5, Colootollah Street, in the town of Calcutta, together with the piece or parcel of land or ground whereon the same is erected and built, containing by estimation seven cottahs and nine square feet, and butted and bounded—on the East by a public lane called Colootollah Lane; on the West by a public drain; on the North by a piece of land formerly belonging to Rampersand Dutt, but now the property of Hushmadad Khan; and on the South by a piece of land with tiled huts built thereon, belonging, or reported to belong, to Roopchand Auddy.

For further particulars apply at the Office of Mr. Charles Frederick Pittar, Solicitor of the plaintiff, No. 7, Council House Street, Calcutta.

R. BELCHAMBERS,
Registrar.

HIGH COURT, ORIGINAL JURISDICTION,
REGISTRAR'S OFFICE,
Calcutta, the 12th March 1872. (1143—2)

Central Provinces Gazetteer.

EDITION OF 1870 in one Vol.

A LIMITED number of the above work, strongly bound in cloth, octavo size, for sale at Rs. 12 per vol., exclusive of postage charge. Apply to

MESSRS. THACKER, VINNING, Bombay,
MESSRS. THACKER, SPINK & Co., Calcutta,
or to Supdt., Chief Commr.'s Office, Nagpur.

TO BE PEREMPTORILY SOLD, by the Registrar of the High Court of Judicature at Fort William in Bengal, in its Ordinary Original Civil Jurisdiction, at the Town Hall, on Saturday, the twentieth day of April one thousand eight hundred and seventy-two, at the hour of two o'clock in the afternoon, pursuant to a decree of this Court in suit No. 313 of one thousand eight hundred and seventy-one, wherein Sumbhoonath Mullick is plaintiff and Unnodapersaud Chatterjee is defendant, and bearing date the twenty-sixth June one thousand eight hundred and seventy-one, the following properties, that is to say:—

Lot No. 1.

All that undivided moiety or half part or share of him the said defendant of and in all that upper-roomed brick-built messuage, tenement, or dwelling-house with the piece or parcel of land or ground on part whereof the same is erected and built, containing by estimation six cottahs ten chittacks and twenty-five feet, be the same a little more or less, situate, lying, and being No. 5, (formerly No. 4,) Wooraparah Lane, in the town of Calcutta, and butted and bounded in manner following, that is to say: on the north by the dwelling-house and premises of Woomes Chunder Ghose, on the south partly by a private lane leading from Wooraparah Lane and by the dwelling-house and premises of Nobocomar Goor; on the east by the dwelling-house and premises of Kartick Ghose; and on the west by the house and premises of Doorgachurn Ghose.

Lot No. 2.

The like share of and in all that piece or parcel of tenanted land or ground, containing by estimation twelve cottahs and twenty-one feet, more or less, situate, lying, and being No. 15, (formerly No. 10,) Goomgur Lane, in Calcutta aforesaid, and butted and bounded in manner following, that is to say: on the east by the tenanted house of Goopeenath Ghose; on the west by public road; on the north by the tenanted land of Gunga Dhur Chunder; and on the south by the tenanted house and premises of Moonshee Duder Juma.

Lot No. 3.

The like share of and in all that upper-roomed brick-built messuage, tenement, or dwelling-house, with the piece or parcel of land or ground thereunto belonging, and on part whereof the same is erected and built, containing by estimation seven cottahs and twelve feet, situate, lying, and being No. 25, (formerly No. 44,) Mullungah Lane, in Calcutta aforesaid, and butted and bounded in manner following, that is to say: on the north by Obhoy Holdars Lane and the dwelling-house of Sumbhoonath Chatterjee; on the south partly by the tenanted house and premises of Ramdhone Doss, partly by a narrow lane, and partly by the dwelling-house of Puddomoney Dossee; on the east by the dwelling-house and premises of Juggomohun Doss; and on the west by a public road and W. B. Bampton's garden house.

An abstract of the title may be inspected, and further particulars obtained at the office of Messrs. Beeby and Rutter, Solicitors for the plaintiff.

R. BELCHAMBERS,
Registrar.

CALCUTTA HIGH COURT,
ORIGINAL JURISDICTION, REGISTRAR'S OFFICE,
The 16th March 1872. (1162—2)

TO BE PEREMPTORILY SOLD, under a decree of the High Court of Judicature at Fort William in Bengal, in its Ordinary Original Civil Jurisdiction, made in the suit No. 40 of one thousand eight hundred and seventy-one, and dated the third day of April one thousand eight hundred and seventy-one, wherein Degumber Mitter, Hurrymohun Roy, and Pearymohun Roy, are plaintiffs, and Nittogopaul Chatterjee and Russickloll Chatterjee are defendants, by the Registrar of the said Court, at the Town Hall, on Saturday, the sixth day of April next, at the hour of two o'clock in the afternoon, the undermentioned property, that is to say:—

All that brick-built house and premises, No. 18-3, in Baheer Simlah, north of Sukeas Street, in the town of Calcutta, together with the land thereunto belonging, and on part whereof the same is erected, measuring four cottahs and nine chittacks or thereabouts, and bounded on the North by a tank, now the property of Nobinchunder Bose; on the South now by Sukeas Street; on the East now by the house of Nundoram Gope; and on the West now by the house of Kessubchunder Ghose.

For further particulars and conditions of sale, apply at the Office of Mr. Charles William Hatch, Attorney for the plaintiffs, No. 10, Old Post Office Street.

R. BELCHAMBERS,
Registrar.

HIGH COURT, ORIGINAL JURISDICTION,
REGISTRAR'S OFFICE,
Calcutta, the 6th March 1872. (1135—2)

TO BE PEREMPTORILY SOLD, pursuant to a decree of the High Court, in its Ordinary Original Civil Jurisdiction, made in suit No. 690 of one thousand eight hundred and sixty-nine, wherein Bhoyro Doss, of Burtollah Street, in the town of Calcutta, Hindoo inhabitant and jeweller is plaintiff, and Damodur Doss Burmono, of Burrabazar, in the town of Calcutta, Hindoo infant, sole heir and legal representative of Konnoyloll Burmon, deceased, is defendant, on and, bearing date the twenty-third day of November one thousand eight hundred and seventy, by the Registrar of the said Court, in its Ordinary Original Civil Jurisdiction, at the Town Hall, on Saturday, the sixth day of April next, at the hour of two o'clock in the afternoon, the following property, that is to say:—

All that upper-roomed brick-built messuage, tenement, or dwelling-house, land, hereditaments, and premises, numbered fourteen, containing by estimation one cottah thirteen chittacks and fifteen feet, situate, lying, and being at Baustollah, in Burrabazar, in the town of Calcutta, and butted and bounded in manner following, (that is to say), on the west side thereof by a lane there leading at Baustollah Street; on the east side thereof by the house and premises of Durponarain Surnekar; on the north side thereof by the house and premises of Kanto Mitter; and on the south side thereof by the house and premises of the late Sibchurn Loll Baurah.

For further particulars, apply at the Office of Messieurs Judge and Gangooly, Solicitors for the plaintiff abovenamed, No. 3, Hastings Street, Calcutta.

R. BELCHAMBERS, *Registrar.*

CALCUTTA HIGH COURT,
ORIGINAL JURISDICTION, REGISTRAR'S OFFICE,
The 6th March 1872. (1158—2)

TO BE PEREMPTORILY SOLD, by the Registrar of the High Court of Judicature at Fort William in Bengal, in its Ordinary Original Civil Jurisdiction, at the Town Hall, on Saturday, the twentieth day of April one thousand eight hundred and seventy-two, at the hour of two o'clock in the afternoon, pursuant to a decree of the said Court in suit No. 327 of one thousand eight hundred and seventy-one, wherein Sonatun Doss and others are plaintiffs, and Doorga Churn Dutt is defendant, dated the twenty-ninth day of June one thousand eight hundred and seventy-one, the following property, that is to say:—

All that upper-roomed brick-built messuage, tenement, or dwelling-house, with the piece or parcel of land or ground on part whereof the same is erected and built, containing by estimation eight cottahs ten and half chittacks, be the same a little more or less, situate, lying, and being on the south side of the Nauth's Bagaun Street, in Hautkhollah, in the town of Calcutta, and being No. 1 in the said street, and bounded in manner following, that is to say: on the east by the land of Rajah Kallykristo Bahadoor; on the west by a public road called the Strand; on the north by the public road called Nauth's Bagaun Street; and on the south by the Bazar of Rajah Kallykristo Bahadoor.

An abstract of the title may be inspected, and further particulars obtained from the office of Messieurs Beeby and Rutter, Solicitors for the plaintiffs.

R. BELCHAMBERS, Registrar.

CALCUTTA HIGH COURT,
ORIGINAL JURISDICTION, REGISTRAR'S OFFICE,
The 21st March 1872. (1161—2)

WASTE LAND RULES,

Being Chap. XXVI. of the Rules of the Board of Revenue

Price, 4 annas. Packing and postage charges, 2 annas extra.

Calcutta: Office of Supdt of Government Printing,
No. 8, Hastings Street.

The Indian Financial Almanack for 1872,
Price 4 annas; postage 1 anna.

Selections from Unpublished Records of Government for the years 1748 to 1767 inclusive. Relating mainly to the social condition of Bengal With a Map of Calcutta in 1784. By the Rev. J. Long, Member of the Government Record Commission. Price Rs. 5; packing and postage 1 Rupee extra.

Selections from Calcutta Gazettes of the years 1816 to 1823 inclusive, showing the political and social condition of the English in India upwards of fifty years ago. By Hugh David Sandeman, C.S., Accountant-General, Bengal, and Member of the Record Commission. Volume I, 3 Rs., and Volumes II, III, IV, and V, at 5 Rs. each; packing and postage 1 Rupee extra.

The above to be had at the Office of Superintendent of Government Printing, 8, Hastings Street, Calcutta.

TO BE PEREMPTORILY SOLD, by the Registrar of the High Court of Judicature at Fort William in Bengal, in its Ordinary Original Civil Jurisdiction, at the Town Hall, on Saturday, the twentieth day of April one thousand eight hundred and seventy-two, at the hour of two o'clock in the afternoon, pursuant to a decree of the said Court, in suit No. 978 of one thousand eight hundred and sixty-six, wherein Khoop Chund is plaintiff, and Rogonauth Roy is defendant, dated eleventh February one thousand eight hundred and sixty-seven, the following properties, that is to say:—

All that two-storied messuage, tenement, or dwelling-house, with out-offices and buildings, with the piece or parcel of land on part whereof the same are erected and built, situate, lying, and being at Raneegunge, in the district of Burdwan, bounded on the south by the Government road; on the west by the land and premises of one Byeaunt; and on the east by the Government road.

Also all that piece or parcel of land or ground with the three shops and two rooms erected on part thereof, situate and being at Raneegunge aforesaid, and bounded on the south and west by the Government road; on the north by land now or late belonging to Soodiram.

Also all that piece or parcel of land or ground with the bungalow and building erected on part thereof, and containing by estimation one biggah more or less, situate and being at Raneegunge aforesaid, and bounded on the east by land now or late belonging to one Ramnarain Baboo.

An abstract of the title may be inspected, and further particulars obtained at the Office of Messieurs Beeby and Rutter, Attorneys for the plaintiff.

R. BELCHAMBERS,
Registrar.

CALCUTTA HIGH COURT,
ORIGINAL JURISDICTION, REGISTRAR'S OFFICE,
The 21st March 1872. (1160—2)

Just Published.

Bengal Official Army List.

Corrected up to 1st January 1872.

THE Official Quarterly Army List of H. M.'s Forces in Bengal, to which is added a non-official Supplement, containing the latest corrected Civil List, &c. &c. Price Rs. 5, and 8 annas extra for packing and postage.

Calcutta: Office of Supdt. of Government Printing,
No. 8, Hastings Street.

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APPENDIX TO
The Calcutta Gazette.

WEDNESDAY, APRIL 3, 1872.

ADVERTISEMENTS OF SALE.

NOTICE is hereby given that the undermentioned plot of land no longer required by the Government situated in the district of Shahabad, will be put up to sale, at the Shahabad Collectorate, on Monday, the 29th April 1872, corresponding with 6th Baisakh 1279 F.S.

2. The purchasers of this plot will be subject to the following conditions:—

1st.—If the amount of purchase money do not exceed Rs. 100, the whole amount to be paid down at once.

2nd.—If the amount of purchase money exceed Rs. 100, one-fourth of the amount bid to be immediately deposited. If the balance be not paid by noon of the fifteenth day after the sale, reckoning the day of sale as one, or if that day be a close holiday, then by noon of the first succeeding office day, the sale to be cancelled, the sum deposited being forfeited to Government, and the estate to be again put up for sale at the risk of the defaulting purchaser after issue of advertisement, as in the case of original sale.

3rd.—The plot will be sold revenue-free to the highest bidder above the upset price.

Number in State- ment of Govern- ment Estate.	Number on the District Roll.	Name of Estate and Pergunnah.	Approximate area in acres.	Upset Price.
			A. R. P.	Rs. As. P.
.....		Plot of land on which the old circuit bungalow stood in the town of Arrah with trees.	5 0 17½	270 0 0

SHAHABAD COLLECTORATE,
The 3rd February 1872.

H. W. ALEXANDER, *Collector.*

NOTICE is hereby given that the undermentioned plots of Class C lands no longer required by the East Indian Railway Company, situated in the district of Shahabad, will be put up to sale, at the Shahabad Collectorate, on Monday, the 29th of April 1872, corresponding with 6th Baisakh 1279 F.S.

The purchasers of these plots will be subject to the following conditions:—

1st.—If the amount of purchase money do not exceed Rs. 100, the whole amount to be paid down at once.

2nd.—If the amount of purchase money exceed Rs. 100, one-fourth of the amount bid to be immediately deposited. If the balance be not paid by noon of the fifteenth day after the sale, reckoning the day of sale as one, or if that day be a close holiday, then by noon of the first succeeding office day, the sale to be cancelled, the sum deposited being forfeited to Government, and the estate to be again put up for sale, at the risk of the defaulting purchaser, after issue of advertisement, as in the case of original sale.

3rd.—The plots will be sold revenue-free to the highest bidders above the upset price.

Number in State- ment of Govern- ment Estates.	Number on the District Roll.	Names of Estates and Pergunnahs.	Area in acres.	Upset Price.
			A. R. P.	Rs. As. P.
.....		Koelwor, Pergunnah Baruhgawan ...	47 2 0	760 0 0
.....		Dhundhian, ditto ditto ...	35 0 38	564 0 0
.....		Humidpore, ditto Arrah ...	1 0 15	18 0 0
.....		Domraon, ditto Bhojepore ...	3 0 30	51 0 0
		Total ...	87 0 3	

SHAHABAD COLLECTORATE,
The 3rd February 1872.

H. W. ALEXANDER, *Collector.*

NOTICE is hereby given that the undermentioned plot of Class C lands no longer required by the East Indian Railway Company, situated in the District of Monghyr, will be put up to sale, at the Monghyr Collectorate, on Saturday, the 12th of April 1872, corresponding with 18th Cheyt 1279 P.S.

2. The purchaser of this plot will be subject to the following conditions:—

1st.—If the amount of purchase money do not exceed Rs. 100, the whole amount to be paid down at once.

2nd.—If the amount of purchase money exceed Rs. 100, one-fourth of the amount bid to be immediately deposited. If the balance be not paid by noon of the fifteenth day after the sale, reckoning the day of sale as one, or if that day be a close holiday, then by noon of the first succeeding office day, the sale to be cancelled, the sum deposited being forfeited to Government, and the estate to be again put up for sale, at the risk of the defaulting purchaser, after issue of advertisement, as in the case of original sale.

3rd.—The plot will be sold revenue free to the highest bidder above the upset price.

Number in Statement of Government Estates.	Number on the District Roll.	Name of Estate and Pergunnah.	Approximate area in acres.	GOVERNMENT REVENUE.			Upset Price.
				Revenue assessed.	Road cess.	Total.	
			A. R. P.	Rs. As. P.	Rs. As. P.	Rs. As. P.	Rs. As. P.
1	4444	Arazee Class C lands in Mouzah Singapore. Pergunnah Dhurhura, relinquished by the Railway Company.	1 1 28	.....	.....	.....	46 0 0

COLLR.'s OFFICE, DISTRICT MONGHYR,
The 7th February 1872.

G. N. BARLOW, *Collector.*



The Calcutta Gazette.

WEDNESDAY, APRIL 10, 1872.

REGISTERED
No. 50.

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Government of India.

LEGISLATIVE DEPARTMENT.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 22nd March 1872, and is hereby promulgated for general information:—

Act No. III of 1872.

An Act to provide a form of Marriage in certain cases.

WHEREAS it is expedient to provide a form of marriage for persons who do not profess the Christian, Jewish, Hindú, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion, and to legalize certain marriages the validity of which is doubtful; It is hereby enacted as follows:—

1. This Act extends to the whole of British India, and shall come into force on the passing thereof.

Local extent,
Commencement.

2. Marriages may be celebrated under this

Conditions upon which marriages under Act may be celebrated.

Act between persons neither of whom professes the Christian or the Jewish, or the Hindu or the Muham-

madan, or the Parsi or the Buddhist, or the Sikh or the Jaina religion, upon the following conditions:—

(1.)—Neither party must, at the time of the marriage, have a husband or wife living:

(2.)—The man must have completed his age of eighteen years, and the woman her age of fourteen years, according to the Gregorian calendar:

(3.)—Each party must, if he or she has not completed the age of twenty-one years, have obtained the consent of his or her father or guardian to the marriage:

(4.)—The parties must not be related to each other in any degree of consanguinity or affinity which would, according to any law to which either of them is subject, render a marriage between them illegal.

1st Proviso.—No such law or custom, other than one relating to consanguinity or affinity, shall prevent them from marrying.

2nd Proviso.—No law or custom as to consanguinity shall prevent them from marrying, unless a relationship can be traced between the parties through some common ancestor, who stands to each of them in a nearer relationship than that of great-great-grand-father or great-great-grand-mother, or unless one of the parties is the lineal ancestor, or the brother or sister of some lineal ancestor, of the other.

3. The Local Government may appoint one or more Registrars under this Act, either by name or as holding any office for the time being, for any portion of the territory subject to its administration. The officer so appointed shall be called 'Registrar of Marriages under Act III of 1872,' and is hereinafter referred to as 'the Registrar.' The portion of territory for which any such officer is appointed shall be deemed his district.

4. When a marriage is intended to be solemnized under this Act, one of the parties must give notice in writing to the Registrar, before whom it is to be solemnized.

The Registrar to whom such notice is given must be the Registrar of a district within which one at least of the parties to the marriage has resided for fourteen days before such notice is given.

Such notice may be in the form given in the first schedule to this Act.

5. The Registrar shall file all such notices and keep them with the records of his office, and shall also forthwith enter a true copy of every such notice in a book to be for that purpose furnished to him by the Government, to be called the "Marriage Notice Book under Act III of 1872," and such book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

6. Fourteen days after notice of an intended marriage has been given under section four, such marriage may be solemnized, unless it has been previously objected to in the manner hereinafter mentioned.

Any person may object to any such marriage on the ground that it would contravene some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section two.

The nature of the objection made shall be recorded in writing by the Registrar in the register, and shall, if necessary, be read over and explained to the person making the objection, and shall be signed by him or on his behalf.

7. On receipt of such notice of objection the Registrar shall not proceed to solemnize the marriage until the lapse of fourteen days from the receipt of such objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, until the lapse of fourteen days from the opening of such Court.

The person objecting to the intended marriage may file a suit in any Civil Court having local jurisdiction (other than a Court of Small Causes) for a declaratory decree, declaring that such marriage

would contravene some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section two.

8. The officer before whom such suit is filed shall thereupon give the person presenting it a certificate to the effect that such suit has been filed. If such certificate be lodged with the Registrar within fourteen days from the receipt of notice of objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, within fourteen days of the opening of such Court, the marriage shall not be solemnized till the decision of such Court has been given and the period, allowed by law for appeals from such decision, has elapsed; or, if there be an appeal from such decision, till the decision of the Appellate Court has been given.

If such certificate be not lodged in the manner and within the period prescribed in the last preceding paragraph, or if the decision of the Court be that such marriage would not contravene any one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section two, such marriage may be solemnized.

If the decision of such Court be that the marriage in question would contravene any one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section two, the marriage shall not be solemnized.

9. Any Court, in which any such suit as is referred to in section seven is filed, may, if it shall appear to it that the objection was not reasonable and *bona fide*, inflict a fine, not exceeding one thousand rupees, on the person objecting, and award it, or any part of it to the parties to the intended marriage.

10. Before the marriage is solemnized, the parties and three witnesses shall, in the presence of the Registrar, sign a declaration in the form contained in the second schedule to this Act. If either party has not completed the age of twenty-one years, the declaration shall also be signed by his or her father or guardian, except in the case of a widow and in every case, it shall be countersigned by the Registrar.

11. The marriage shall be solemnized in the presence of the Registrar and of the three witnesses who signed the declaration.

It may be solemnized in any form, provided that each party says to the other, in the presence and hearing of the Registrar and witnesses, 'I, [A] take the [B] to be my lawful wife (or husband).'

12. The marriage may be celebrated either at the office of the Registrar or at such other place, within reasonable distance of the office of the Registrar, as the parties desire. Provided that the Local Government may prescribe the conditions under which such marriages may be solemnized at places other than the Registrar's office, and the additional fees to be paid thereupon.

13. When the marriage has been solemnized, the Registrar shall enter a certificate thereof in a book to be kept by him for that purpose, and to be called the 'Marriage Certificate Book under

Certificate of filing of suit to be lodged with Registrar.

Court may fine when objection not reasonable.

Declaration by parties and witnesses.

Marriage how to be solemnized.

Place where marriage may be solemnized.

Form of certificate.

Appointment of Marriage Registrars.

One of the parties to intended marriage to give notice to Registrar.

Notice to be filed and copy entered in the Marriage Notice Book.

Objection to marriage.

Procedure on receipt of objection.

Objector may file suit.

Act III of 1872, in the form given in the third schedule to this Act, and such certificate shall be signed by the parties to the marriage and the three witnesses.

14. The Local Government shall prescribe the fees to be paid to the Registrar for the duties to be discharged by him under this Act.

The Registrar may, if he think fit, demand payment of any such fee before solemnization of the marriage or performance of any other duty in respect of which it is payable.

The said Marriage Certificate Book shall at all reasonable times be open for inspection, and shall be admissible as evidence of the truth of the statements therein contained. Certified extracts therefrom shall on application be given by the Registrar on the payment to him by the applicant of a fee to be fixed by the Local Government for each such extract.

15. Every person who, being at the time married, procures a marriage of himself to be solemnized under this Act, shall be deemed to have committed an offence under section four hundred and ninety-four or section four hundred and ninety-five of the Indian Penal Code as the case may be; and the marriage so solemnized is void.

16. Every person married under this Act who, during the lifetime of his or her wife or husband, contracts any other marriage, shall be subject to the penalties provided in sections four hundred and ninety-four and four hundred and ninety-five of the Indian Penal Code for the offence of marrying again during the lifetime of a husband or wife, whatever may be the religion which he or she professed at the time of such second marriage.

17. The Indian Divorce Act shall apply to all marriages contracted under this Act, and any such marriage may be declared null or dissolved in the manner therein provided, and for the causes therein mentioned, or on the ground that it contravenes some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section two of this Act.

18. The issue of marriages solemnized under this Act shall, if they marry under this Act, be deemed to be subject to the law to which their fathers were subject as to the prohibition of marriages by reason of consanguinity and affinity, and the provisos to section two of this Act shall apply to them.

19. Nothing in this Act contained shall affect the validity of any marriage not solemnized under its provisions; nor shall this Act be deemed directly or indirectly to affect the validity of any mode of contracting marriage; but if the validity of any such mode shall hereafter come into question before any Court, such question shall be decided as if this Act had not been passed.

20. All persons who have heretofore contracted marriages in the presence of at least two witnesses, according to any form whatever, may at any time, previous to the first day of January 1873, have such

marriages registered under this Act, and such marriages shall thereupon be deemed to be and to have been as valid as if they had been contracted and solemnized under this Act: Provided that persons who have such marriages registered under this section must, on such registry, sign a declaration in the form given in the fourth schedule to this Act.

No marriage shall be registered under this section unless conditions (1), (3) and (4) of section two were complied with; and no such marriage shall be registered under this section if, during its continuance, either party has contracted a subsequent marriage.

21. Every person making, signing or attesting any declaration or certificate prescribed by this Act, containing a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed guilty of the offence described in section one hundred and ninety-nine of the Indian Penal Code.

FIRST SCHEDULE.

(See Section 4.)

NOTICE OF MARRIAGE.

To a Registrar of Marriages under Act III of 1872 for the District.

I hereby give you notice that a marriage under Act III of 1872, is intended to be had, within three calendar months from the date thereof, between me and the other party herein named and described (that is to say) :—

Names.	Condition.	Rank or profession.	Age.	Dwelling place.	Length of residence.
A B	Unmarried, Widower.	Landowner.	Of full age.	.....	23 days
C D	Spinster.	.....	Minor.	.....	.....

Witness my hand, this 187 . day of

(Signed) A. B.

SECOND SCHEDULE.

(See Section 10.)

Declaration to be made by the Bridegroom.

I, A B, hereby declare as follows :—

1. I am at the present time unmarried :

2. I do not profess the Christian, Jewish, Hindú, Mahammadan, Parsi, Buddhist, Sikh or Jaina religion :

3. I have completed my age of eighteen years :

4. I am not related to *C D* [*the bride*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *C D* is subject, and subject to the provisos of clause (4) of section two of Act III of 1872, render a marriage between us illegal :

[*And when the bridegroom has not completed his age of twenty-one years :*

5. The consent of my father [*or guardian as the case may be*] has been given to a marriage between myself and *C D*, and has not been revoked.]

6. I am aware that if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(Signed) *A B* (*the bridegroom*).

Declaration to be made by the bride :—

I, *C D*, hereby declare as follows :—

1. I am at the present time unmarried :

2. I do not profess the Christian, Jewish, Hindú, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion :

3. I have completed my age of fourteen years :

4. I am not related to *A B* [*the bridegroom*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *A B* is subject, and subject to the provisos of clause (4) of section two of Act III of 1872, render a marriage between us illegal.

[*And when the bride has not completed her age of twenty-one years, unless she is a widow :*

5. The consent of *M N* my father [*or guardian, as the case may be*] has been given to a marriage between myself and *A B*, and has not been revoked.]

6. I am aware that if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

Signed in our presence by the abovenamed *A B* and *C D* :

G H,
I J,
K L, } (*three witnesses*).

[*And when the bridegroom or bride has not completed the age of twenty-one years, except in the case of a widow :*

Signed in my presence and with my consent by the above *A B* and *C D* :

M N, the father [*or guardian*] of the abovenamed *A B* [*or C D*, as the case may be.]

(Countersigned) *E F*,

Registrar of Marriages under Act III of 1872 for the District of

Dated the day of 18 .

THIRD SCHEDULE.

(See Section 13.)

Registrar's Certificate.

I, *E F*, certify that, on the of
18 appeared before me *A B* and *C D*, each of whom in my presence and in the presence of

three credible witnesses, whose names are signed hereunder, made the declarations required by Act III of 1872, and that a marriage under the said Act was solemnized between them in my presence.

(Signed) *E F*,

Registrar of Marriages under Act III of 1872 for the District of

(Signed) *A B*,
C D,

G H,

I J,

K L,

} (*three witnesses*)

Dated the day of 18 .

FOURTH SCHEDULE.

(See Section 20.)

Declaration to be made by the Husband.

I, *A B*, hereby declare as follows :

1. I was married to *C D* at (*place*), on or about (*date*) in the presence of (*two witnesses*) :

2. I was, at the time of my marriage to my wife, *C D*, unmarried :

3. I did not at such time profess the Christian, Jewish, Hindú, Muhammadan, Parsi, Buddhist, Sikh, or Jaina religion :

4. I have not contracted any subsequent marriage :

5. I am not related to *C D* [*the wife*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *C D* is subject, and subject to the provisos of clause (4) of section 2 of Act III of 1872, render a marriage between us illegal :

[*And when the bridegroom had not completed his age of twenty-one years :*

6. The consent of my father [*or guardian, as the case may be*], had been given to a marriage between myself and *C D*, and had not been revoked.]

7. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment and also to fine.

(Signed) *A B* (*the husband*).

Declaration to be made by the Wife :

I, *C D*, hereby declare as follows :

1. I was married to *A B* at (*place*), on or about (*date*) in the presence of (*two witnesses*) :

2. I was, at the time of my marriage to my husband, *A B*, unmarried :

3. I did not at such time profess the Christian, Jewish, Hindú, Muhammadan, Parsi, Buddhist, Sikh, or Jaina religion :

4. I have not contracted any subsequent marriage :

5. I am not related to *A B* [*the husband*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *A B* is subject, and subject to the provisos of clause (4) of section 2 of Act III of 1872, render a marriage between us illegal.

[*And when the bride had not, at the time of her marriage, completed her age of twenty-one years, unless she was then a widow :*

6. The consent of *M N* my father [*or guardian, as the case may be*] had at such time been given to a marriage between myself and *A B*, and had not been revoked :]

7. I am aware that, if any statement in this declaration is false, and if in making such state-

ment I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

Signed in our presence by the abovenamed *A B* and *C D*:

G H, } (two witnesses.)
I J, }

(Countersigned) *E F,*

Registrar of Marriages under Act III
of 1872 for the District of

Dated the day of 18 .

H. S. CUNNINGHAM,

Offg. Secy. to the Council of the
Govr. Genl. for making Laws
and Regulations.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 5th April 1872, and is hereby promulgated for general information:—

ACT No. VI OF 1872.

An Act to amend the law relating to Oaths and Affirmations.

WHEREAS it is expedient to amend the law relating to oaths and affirmations; It is enacted as follows:—

Preamble. 1. This Act may be called "The Oaths Act, 1872."

Short title. 2. It extends to British India, applies to all oaths or affirmations taken or made by or administered to British subjects in Native

Extent. Indian States, and it shall come into force on the passing thereof.

Commencement. 3. Every person who may by law be sworn or called upon to make a solemn affirmation, in any capacity whatever, may, if he objects to such oath or solemn affirmation, make in place thereof a simple affirmation to the same effect, omitting the words 'So help me God,' 'In the presence of Almighty God,' or other expressions of the same nature.

4. If any party to, or witness in, any judicial proceeding offers to give evidence on oath in any form common amongst, or held binding by persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, tender such oath to him.

If any party to any proceeding offers to be bound by any such oath as is mentioned in the first paragraph of this section, if such oath is taken by the other party to, or by any witness in, such proceeding, the Court may, if it thinks fit, ask such party or witness whether he will take the oath or not.

If such party or witness accepts such oath, the Court may proceed to administer it, or if it is of such a nature that it may be more conveniently taken out of Court, the Court may issue a Commission to any person to administer it, and authorise such person to take the evidence of the person to be sworn and return it to the Court.

The evidence so given shall, as against the person who offered to be bound by it, be conclusive proof of the matter stated.

If the party or witness refuses to take the oath he shall not be compelled to take it, but the Court shall record, as part of the proceedings, the nature of the oath proposed, the facts that he was asked whether he would take it, and that he refused it, together with any reason which he may assign for his refusal.

5. No omission to take any oath or to make any solemn or simple affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place.

6. Nothing in this Act shall apply to oaths or affirmations prescribed by any law which, under the provisions of the Indian Councils' Act, 1861, the Governor General in Council has not the power to repeal.

H. S. CUNNINGHAM,
Offg. Secy. to the Council of the
Govr. Genl. for making Laws
and Regulations.

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 19th March 1872, and was referred to a Select Committee with instructions to make their report thereon in two months:—

No. 6 OF 1872.

A Bill to consolidate and amend the law relating to the admission of appeals to Her Majesty in Council from judgments and orders of the Civil Courts.

WHEREAS it is expedient to consolidate and amend the law by which the admission of appeals to Her Majesty in Council from certain judgments and orders of the Civil Courts throughout British India is regulated; It is hereby enacted as follows:—

Preamble. 1. This Act shall be called "The Privy Councils Appeals Act, 1872."

Short title. It extends to the whole of British India, but shall not apply to suits tried by a High Court in any of the Presidency Towns in the exercise of its ordinary original jurisdiction;

Extent. and shall come into force on the passing thereof.

Commencement. 2. The several enactments specified in the schedule hereto annexed are repealed to the extent mentioned in the third column thereof.

3. If any person desires to prefer an appeal to Her Majesty in Council from any final judgment, decree, or order made on appeal or revision by any High Court or other

Court of final appellate jurisdiction in India under the law for the time being in force relating to appeals,

or from any final judgment, decree, or order made by a High Court in the exercise of its original jurisdiction, in any suit in which the amount or value of the subject-matter in dispute exceeds ten thousand rupees, or such amount as may be fixed as the limit for such appeals from time to time by the orders of Her Majesty in Council,

or in which such judgment, decree, or order involves directly or indirectly any claim, demand, or question to or respecting property the amount or value of which is not less than ten thousand rupees, or such other amount as aforesaid,

or from any other final judgment, decree, or order made either on appeal or otherwise when the High Court declares that the case is a fit one for appeal to Her Majesty in Council,

and the application for the admission of the appeal is presented within six months from the date of the judgment, decree, or order appealed from,

the Court shall admit such appeal subject to such rules and orders as may be made from time to time by Her Majesty in Council in regard to the disposal of such appeals.

4. When the High Court or other Court as aforesaid has admitted any such appeal as is mentioned in the last preceding section, it shall forthwith cause notice of such appeal having been made to be given to the opposite party in the suit to which the appeal relates.

5. If application be made to that effect, the Court may either direct the judgment or order against which an appeal has been preferred to be enforced, sufficient security being taken for the performance of such decree or order as Her Majesty in Council may make on the appeal; or it may direct, on like security being given, that no injunction for the enforcement of the judgment or order shall be issued pending the result of the appeal, or that if any such injunction has been issued, its execution shall, so far as may be practicable, be suspended.

6. In either case, the Court shall require the appellant to give security for the payment of such costs as it may think likely to be incurred by the appeal within such period, not exceeding six months from the date of the judgment or order appealed from, as to it may seem fit.

7. Any person who desires to prefer an appeal to Her Majesty in either of the cases hereinbefore mentioned, may present a petition to the High Court or other Court as aforesaid for the purpose of obtaining security from the opposite party for staying execution of the judgment, decree, or order against which he is about to appeal, within six months from the date of such judgment, decree, or order.

8. If at any time during the pendency of such appeal the security taken is from any cause shewn to be inadequate, the Court which has admitted such appeal may, on the application of the opposite party, require further security; and may, in default of such further security being given, if the original security was furnished by the appellant, enforce the judgment, decree, or order against which an appeal has been made as if no such security had been given; if the original security was given by the respondent, the Court shall, so far as may be practicable, compel him to deliver the property to which the appeal relates, and such property shall be dealt with according to the rules in force applicable to such case.

9. In every appeal under this Act, the Court shall certify and transmit to Her Majesty in Council under the seal of the Court two correct copies of all evidence, proceedings, judgments, decrees and orders taken, held or made in the suit or case appealed so far as the same are relevant to the matters of appeal, together with a copy of the reasons recorded by such Court for or against the judgment, decree, or order against which the appeal has been preferred. The expense of preparing the said copies and of translating so much of the original documents as are not in that language, shall be defrayed by the party prosecuting the appeal; and the amount required to cover such expense shall be deposited by the appellant within the period allowed for furnishing security for the costs of the appeal;

Until such deposit is made, the appeal shall not be admitted.

10. The orders or decrees of Her Majesty in Council when duly certified shall be enforced and executed subject to the directions of the High Court or other Court as aforesaid, by the Judge by whom the suit was originally tried in the manner and according to the rules and laws applicable to the execution of original orders or decrees made by such Judge.

11. Any person who desires to enforce or obtain the execution of any such decree or order made in appeal as aforesaid, shall present a petition to the Court which made the first decree or order appealed from, and the said petition shall be accompanied by a certified copy of the decree or order made in appeal and sought to be enforced or executed.

12. An appeal shall lie from any decree or order made by such last mentioned Court relating to the enforcement or execution of any such decree or order made in appeal as herein before mentioned, in the same manner and subject to the same rules as an appeal from a decree or order made upon a petition for the enforcement or execution of the decree or order first appealed from.

SCHEDULE.
ENACTMENTS REPEALED.

No. and year of enactment.	Title.	Extent of repeal.
Bengal Regulation XVI of 1797.	A Regulation respecting Appeals from the Court of Sudder Dewanny Adawlut to his Most Excellent Majesty and his Most Honorable Privy Council.	The whole.
" V of 1803.	A Regulation for empowering the Sudder Dewanny Adawlut to try Appeals from the Decisions of the Provincial Court of Appeal established in the Provinces ceded by the Nawab Vizier to the Honorable the English East India Company; and for extending the Jurisdiction of the Sudder Dewanny Adawlut over the said Provinces, and all the Civil Courts established therein.	The whole.
Madras Regulation VIII of 1818.	A Regulation prescribing the Rules under which Appeals may be preferred to the King's Most Excellent Majesty in his Privy Council, from the Decisions of the Court of Sudder Adawlut at Fort Saint George.	The whole.
Bombay Regulation IV of 1827.	A Regulation prescribing the Forms of Proceeding of the Courts of Law in Civil Suits and Appeals, and Rules for the Trial of the same.	Section 100.
Act II of 1844.	An Act respecting the Expenses of preparing Copies of Proceedings in Appeals.	The whole.
Act XXV of 1852.	An Act for the execution of decrees made in appeal by Her Majesty in Council, or by the Courts of Sudder Dewanny Adawlut and of the Zillah and City Judges in the Presidency of Fort William in Bengal.	So much as is not repealed.
Act II of 1863.	An Act to regulate the admission of Appeals to Her Majesty in Council from certain Judgments and Orders in Provinces not subject to the General Regulations.	The whole.

STATEMENT OF OBJECTS AND REASONS.

The law relating to the admission and transmission of appeals from the judgments and orders of the Civil Courts in India to Her Majesty in Council is distributed over the following enactments, namely—

Bengal Regulation XVI of 1797	In force in the Regulation territories.
and Regulation V of 1803	
Madras Regulation VIII of 1818	
Bombay Regulation IV of 1827,	
Section 100	
Act II of 1844	In force in the Non-Regulation Provinces.
Act XXV of 1852	
And Act II of 1863	

The chief object of the Bill is to reduce into one Act the provisions of these several enactments, with such alterations of a purely verbal character or of arrangements as are incidental to the work of consolidation.

In consequence of the recent alteration of the law relating to appeals in Oudh—an alteration which is likely to be extended soon to British Burma—it has become necessary also to provide for the admission of appeals from the decrees and orders of Courts of final jurisdiction under the law for the time being in force relating to appeals,

as the existing rules of procedure in respect of the admission of appeals to the Privy Council apply only to appeals from the decrees or orders of the Courts of highest civil jurisdiction.

F. R. COCKERELL.

The 8th March 1872.

H. S. CUNNINGHAM,
*Offg. Secy. to the Council of the
Govr.-Genl. for making Laws
and Regulations.*

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 19th March 1872, and was referred to a Select Committee with instructions to make their report thereon in two months:—

No. 7 of 1872.

A Bill to consolidate and amend the Law relating to the Redemption and Foreclosure of Mortgages.

WHEREAS it is expedient to consolidate and amend the law relating to the redemption and foreclosure of mortgages in the territories in which the Bengal Regulations are directly or indirectly in force; It is hereby enacted as follows:—

1. This Act may be called "The Mortgage Procedure Act, 1872."

It extends to the territories subject to the control of the Lieutenant-Governors of Bengal, the North-Western Provinces, and the Punjab, respectively, and to Oudh and the Central Provinces; and it shall come into force on the passing thereof.

2. The enactments mentioned in the schedule hereto annexed are repealed to the extent specified in the third column thereof.

3. Any person who has, by conditional sale or otherwise, mortgaged any landed property, and is desirous of redeeming the same may deposit the amount due on account of principal and interest (if any) in respect of such mortgage in the chief Civil Court of the district in which the mortgaged land is situated, at any time within one year from the latest date fixed for the re-payment of the loan.

The Court shall receive such deposit and cause a written notice of the same to be delivered to the mortgagee.

The deposit so made shall be deemed to preserve to the mortgagor the right of redeeming his property, and if the land is in the possession of the mortgagee, the mortgagor shall be entitled to recover possession subject to such adjustment of accounts as may be required under the terms of the mortgage.

4. When any person in whose favour a deed of mortgage and conditional sale of landed property has been executed is desirous of foreclosing the mortgage and rendering the sale absolute, he may, on or after the expiration of the

Mortgagor of landed property desiring to redeem it, may deposit amount of debt within year after due date.

Notice of deposit to mortgagee.

Effect of deposit.

Mortgagee desiring foreclosure may bring suit.

period stipulated for the repayment of the consideration for which the mortgage was executed, institute a suit in any Court of competent jurisdiction for the foreclosure of the mortgage.

5. If the Court makes a decree of foreclosure in such suit, the foreclosure shall be conditional on the non-payment by the mortgagor of such amount as the Court finds to be due by him to the mortgagee, within one year from the date on which the mortgagor received notice of the institution of the suit.

Condition to attach to decree for foreclosure.

STATEMENT OF OBJECTS AND REASONS.

The procedure relating to the preservation of the right of redemption of mortgaged property

and to foreclosure in force in the Bengal Presidency is prescribed by the Bengal Regulations 1 of 1798, XXXIV of 1803 and XVII of 1806.

The object of the proposed legislation is (1st) to consolidate the law by which this procedure is regulated; and, (2nd), to amend the procedure by assimilating it in a certain measure to the English law on this subject.

F. R. COCKERELL.

The 18th March 1872.

H. S. CUNNINGHAM,

Offg. Secy. to the Council of the
Govr. Genl. for making Laws
and Regulations.

The following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 5th March 1872:—

We, the undersigned, the Members of the Select Committee of the Council of the Governor-General of India for the purpose

Petition from certain Muhammadans of Calcutta and its suburbs, dated 9th November 1870.

Memorial from certain ship-owners of Bombay.

Opinion of the Advocate-General, Bengal, dated 12th November 1870.

Endorsement, Department of Agriculture, Revenue, and Commerce, No. 34, dated 14th July 1871, forwarding telegrams from Home Department, Nos. 5095 and 5124, dated 23rd and 22nd November 1870.

From Officiating Secretary to Government, Home Department, No. 5615, dated 20th December 1870.

From Advocate-General, Calcutta, dated 9th January 1871.

Circular from Home Department, Nos. 733 to 736, dated 7th January 1871.

From Acting Chief Secretary to Government, Madras, No. 113, dated 19th April 1871, and enclosures.

From Chief Secretary to Government, Bombay, No. 1541, dated 13th June 1871, and enclosure.

From Officiating Under-Secretary to Government, Bengal, No. 612, dated 23rd February 1871, and enclosures.

From Secretary to Chief Commissioner, British Burmah, No. 540-6, dated 27th February 1871.

Note by Hon'ble F. S. Chapman, dated 5th December 1871.

From Secretary to Government, Madras, No. 177, dated 18th December 1871, and enclosures.

From Secretary to Government, Madras, No. 2, dated 5th January 1872.

From Secretary to Government, Bengal, No. 163, dated 13th January 1872, and enclosures.

Demi-official letter from Hon'ble F. S. Chapman, dated 10th January 1872, forwarding Resolution of the Government of Bombay (General Department), No. 52, dated 15th January 1872, and enclosures.

From Secretary to Government, Bengal, No. 234, dated 18th January 1872, and enclosure.

From Acting Chief Secretary to Government, Bombay, No. 424, dated 26th January 1872, and enclosures.

Telegram from Chief Secretary to Government, Bombay, No. 425, dated 26th January 1872.

From Secretary to Government, Bombay, No. 771, dated 15th February 1872, forwarding letter from Chamber of Commerce, dated 7th February 1872.

Native Indian subjects of Her Majesty or by others.

3. We propose to alter the definition of "Native Passenger Ship" so as to mean vessels carrying more than sixty Native passengers, and to provide that servants in attendance on their masters are not to be counted as Native passengers. By this alteration, we consider we shall meet any objection which the Peninsular and Oriental, the British India and other large and well regulated Steam Navigation Companies might otherwise reasonably offer to being brought under the provisions of the Act.

4. We propose that the quantity of stored water shall not, even when the vessel is provided with a serviceable condenser, be less than at the rate of four gallons per head per week.

5. With a view to the case of ships owned by persons other than British subjects, we have provided that, when a Convention between the Indian and Turkish Governments has been entered into, to the effect that all Masters of Native Passenger Ships leaving a Turkish for an Indian port, shall execute a bond binding them to touch at Aden and get a clean bill of health from that place, the Master of any such vessel arriving without such clean bill of health, shall be liable forthwith to pay the full penalty of the bond.

6. We recommend that the Bill as thus amended be passed.

F. S. CHAPMAN.
J. F. STEPHEN.
R. STEWART.
J. R. BULLEN SMITH.
F. R. COCKERELL.

The 5th March 1872.

A Bill to amend Act XII of 1870 (the Native Passenger Ships Act).

WHEREAS it is expedient to amend Act XII of 1870 (the Native Passenger Ships Act); It is hereby enacted as follows:—

Amendment of sec. 2, Act XII of 1870.

1. Instead of section two of the said Act, the following shall be read:

“2. This Act extends to British India and applies also to all subjects of Her Majesty within the dominions of Princes and States in alliance with Her Majesty, and to all Native Indian subjects of Her Majesty without and beyond British India.

“Nothing in this Act applies to any Ship-of-War or Transport belonging to or in the service of Her Majesty, or to any Ship-of-War belonging to any Foreign Prince or State, or to any ship under contract with the Government of any European State.”

Amendment of sec. 4.

2. Instead of the last paragraph of section four of the said Act, the following shall be read:

“The words ‘Native Passenger Ship’ mean a ‘Native Passenger vessel, whether sailing or steam, carrying more than sixty passengers, being natives of Asia or Africa; provided that no person in attendance upon another person other than a native of India, shall be deemed a passenger for the purposes of this section.’”

3. After section twelve of the said Act, the following proviso shall be added:

“Provided that, in the case of Steam Ships, the officer aforesaid may, if under the circumstances of the case he thinks fit, reduce the space to be appropriated to passengers in the between decks under the requirements of this section, to a space containing at the least nine superficial and fifty-four cubical feet of space for every adult passenger on board.”

4. After section twenty-one of the said Act, the following proviso shall be added:

“Provided also that, in the case of Steam Ships provided with a condenser, the officer authorised in that behalf may, if under the circumstances of the case he thinks fit, reduce the amount of water to be provided under the requirements of this section to an amount not less than four gallons to every week of the declared duration of the voyage, for every passenger on board.”

Addition after section 26.

5. After section twenty-six of the said Act, the following shall be read:—

26A. Whenever a Convention shall have been entered into between the Governor General of India in Council and the Turkish Government that every Master of a Native Passenger Ship leaving a Turkish port or place and bound for any port or place in British India, whether it be owned by a subject of Her Majesty or not, shall execute a bond binding him in a penalty to touch at Aden, and not to proceed thence without a clean bill of health obtained in the manner provided in section twenty-five, any Master of any such ship, whether he be a subject of Her Majesty or not, who shall come into any port or place in British India without such clean bill of health, may be taken by the officer in charge of such port or place before any Magistrate having local jurisdiction, and on proof that such Master has come from a Turkish port or place, such Magistrate shall presume that such bond was duly executed by such Master, and in default of production of such clean bill of health, shall presume that the penalty mentioned in such bond has been incurred, and may award the full amount or any part of such penalty against such Master, and, in default of payment of such penalty, may recover it as though it were a fine imposed under this Act.

Act to be read as part of Act XII of 1870.

6. This Act shall be read as part of Act XII of 1870.

H. S. CUNNINGHAM,
Offg. Secy. to the Council of the
Govr. Genl. for making Laws
and Regulations.

[Second Publication.]

The following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 12th March 1872:—

We, the undersigned, the Members of the Select Committee of the Council of the

From Secretary of State for India (Judicial), No. 42, dated 14th September 1866.

Second Report of Her Majesty's Commissioners appointed to prepare a body of Substantive Law for India.

Report on Native papers for the week ending 17th August 1867.

Note by the Assistant Secretary in the Home Department (Legislative) on the Second Report of the Indian Law Commissioners.

From Secretary to Chief Commissioner, British Burma, No. 3525, dated 4th November 1867.

Remarks by Hon'ble Sir W. Morgan, Chief Justice, High Court, North-Western Provinces, on Part IV.

Observations by the Assistant Secretary to Government of Bengal, Legislative Department.

From Under Secretary to Government of Bengal, No. 6680, dated 20th December 1867, and enclosure.

Remarks by John Cochrane, Esq., dated 18th December 1867.

From Under Secretary to Government of Bengal, No. 6759, dated 30th December 1867, and enclosure.

Governor General of India for the purpose of making Laws and Regulations, to which the Bill to define and amend the Law relating to Contracts, Sale of Moveables, Indemnity and Guarantee, Bailment, Agency and Partnership was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

2. We have recast Parts I, II and III of the original Bill, composing the first sixty-one sections, and have thrown the provisions

Observations by the Officiating Deputy Commissioner, Delhi, dated 18th December 1867.

Further remarks by John Cochrane, Esq., dated 24th December 1867.

From First Assistant Resident, Haidarabad, No. 45, dated 12th December 1867, and enclosures.

Certain questions by Major General the Hon'ble Sir H. M. Durand, dated 16th December 1867.

Note by C. D. Field, Esq., dated 14th January 1868.

Remarks by Rae Chumna Mull of Delhi, dated 15th January 1868.

Note by Assistant Secretary to Government of India, Home Department (Legislative), dated 24th January 1868.

From Junior Secretary to Government of Bengal, No. 495, dated 28th January 1868, and enclosure.

From Civil and Sessions Judge of Rajshahi, No. 41, dated 31st January 1868.

From Deputy Commissioner, Lohardaga, No. 1069, dated 7th January 1868.

From Judicial Commissioner, Chota Nagpur, No. 7, dated 31st January 1868.

From Under Secretary to Government of Bombay, No. 328, dated 31st January 1868, and enclosures.

Remarks by Secretary and Treasurer, Bank of Bengal, dated 11th February 1868.

From Secretary of State for India, No. 42, dated 14th September 1866, and enclosures.

From Secretary of State for India, No. 8, dated 8th February 1867, and enclosures.

From Commissioner of Mysore, No. 105-8, dated 2nd April 1868, and enclosures.

From Secretary to Government, North-Western Provinces, No. 425, dated 18th April 1868, and enclosures.

From J. W. B. Money, Esq., Barrister-at-law, dated 21st May 1868.

From Officiating Magistrate and Collector of Naddea, No. 1688, dated 26th August 1868, and enclosure.

From First Judge, Calcutta Small Cause Court, No. 39, dated 7th September 1868, and enclosures.

From Registrar, High Court, Calcutta, dated 8th September 1868.

Minute by Hon'ble H. S. Maine, dated 11th September 1868.

From Secretary to Government, Panjab, No. 915, dated 3rd April 1868, and enclosures.

From Chief Secretary to Government, Fort St. George, No. 691, dated 28th April 1868, and enclosures.

From Commissioner of Coorg, No. 81-5, dated 29th April 1868.

From Secretary to Government, North-Western Provinces, No. 219, dated 6th May 1868.

From Secretary to Government, Panjab, No. 616, dated 11th May 1868.

From Under Secretary to Government, Bombay, No. 1478, dated 19th May 1868, and enclosure.

From Under Secretary to Government, Bombay, No. 1505, dated 29th May 1868.

From Secretary to Chief Commissioner, British Burma, No. 171-6, dated 10th June 1868, and enclosure.

From Secretary to Government, Fort St. George, No. 1108, dated 14th July 1868, and enclosures.

From Under Secretary to Government, Bengal, No. 4411, dated 10th August 1868, and enclosures.

From Secretary to Chief Commissioner, Oudh, No. 3782, dated 7th September 1868, and enclosures.

From Secretary to Chief Commissioner, Oudh, No. 3903, dated 14th September 1868.

From Assistant Secretary to Chief Commissioner, Central Provinces, No. 302, dated 16th September 1868, and enclosures.

From Secretary to Government, Panjab, No. 1567, dated 3rd December 1868.

Despatch from the Right Hon'ble the Secretary of State for India, No. 7, dated 18th March 1869.

Despatch from the Right Hon'ble the Secretary of State for India, No. 8, dated 18th March 1869.

Note by Hon'ble J. F. Stephen, dated 6th February 1870.

Despatch from the Right Hon'ble the Secretary of State for India, No. 47, dated 24th November 1870.

Notes by the Hon'ble Members on Secretary of State's despatch, No. 47, dated 24th November 1870.

Despatch from the Right Hon'ble the Secretary of State for India, No. 11, dated 23rd February 1871.

From P. W. Department, No. 1809R, dated 25th September 1871, forwarding letter from Secretary to Government, Panjab, P. W. Department, Railway Branch, No. 3078G, dated 9th September 1871, and enclosures.

Note by Hon'ble J. F. Stephen, dated 29th October 1871.

From P. W. Department, No. 167 G, R, dated 31st January 1872.

From Financial Department, No. 1338, dated 23rd February 1872, and enclosure.

From Secretary to Government, Bombay, No. 1257, dated 18th March 1872.

one or other of these three classes; those which cannot be enforced at all we have called void agreements; those which can be enforced by any of the parties we have called contracts; and those which can be enforced at the option of one party only, we have called voidable contracts.

4. In some cases, a contract which, when made, is enforceable, ceases to be enforceable owing to subsequent occurrences, as, for instance, when a person contracts to paint a picture, and dies before he can complete it. In this case the contract becomes void.

which they embodied into a form which appears to us to be simpler and more intelligible. In particular, we have remodelled that portion of the Bill which treats of contracts in general, and which, as it originally stood, was, we thought, somewhat obscurely arranged. The fundamental terms of the subject have also been more precisely defined. The following are the grounds of the alterations which we suggest:—

3. Section 4 of the Bill is in these words—'A contract is an agreement between parties, whereby a party engages to do a thing or engages not to do a thing. A contract may contain several engagements, and they may be either by the same party or by different parties.'

Throughout the Bill, the expressions 'agreement,' 'contract,' 'binding agreement,' 'engagement' and 'engagement by contract' are used indiscriminately. This wording appeared to us to be wanting in precision, and we have endeavoured to place the subject in a clearer light by a definition of contract, which is based on the following theory: The first step towards a contract is a proposal. If the proposal is accepted, it becomes a promise. Where two men agree, either by proposal and acceptance of a promise, or by entering into reciprocal promises, there is an agreement; and, if the agreement is not purely gratuitous, that which causes it is its consideration. These terms proposal, promise, agreement, consideration are all in common use, and fitly describe relations which arise between man and man quite independently of law. What difference, then, does the law make? It enforces some agreements, it does not enforce others, and there is a third kind which it enforces at the option of one party to them, but not at the option of other parties. An agreement to commit a crime, an agreement to sell a horse, and an agreement obtained by misrepresentation, are all agreements; but the law will not enforce the first at all; it will enforce the second at the option of either party, and the third at the option of one party, but not of the other. All agreements may be put into

5. By defining these fundamental terms, we think that the Act is made much clearer throughout, and, in particular, it becomes easy to arrange it in a systematic way.

6. The first point to be dealt with is, obviously, the law as to proposals, which are the first step towards a contract. Accordingly, chapter I of the draft deals with the communication, acceptance, and revocation of proposals. Its provisions do not differ very materially from sections 6 and 7 of the Bill, but they are adapted to some extent from the New York Civil Code.

7. Sections 6, 8, 9, 10 and 11 in the Bill treat of the validity of contracts under certain circumstances; but it seemed to us that they are not so drawn as to convey readily to the mind of a student the general theory on which they rest. They correspond to chapter II (sections 10-30) of the present draft, which embodies them all, with the addition of a few sections suggested by, or adapted from, the New York Code. The theory on which the whole subject depends is contained in section 10 of the present draft, which explains the rest. 'All agreements are contracts, if they are made by the free consent of parties competent to contract, for a lawful consideration, and with a lawful object, and are not hereby expressly declared to be void.' Each member of this proposition is then separately explained. Section 11 defines who are 'competent persons,' and section 12 defines 'soundness of mind,' which is an element of competency; section 13 defines 'consent'; section 14 specifies the five causes—namely, coercion, undue influence, fraud, misrepresentation and mistake—which may interfere with the freedom of consent; section 15 defines 'coercion'; section 16 defines 'undue influence'; section 17 defines 'fraud'; section 18 defines 'misrepresentation'; section 19 describes the effect upon an agreement of coercion, undue influence, fraud, and misrepresentation; and sections 20 and 22 deal with the effects of mistakes in fact and law.

8. These sections together give, broadly and fully, the meaning of a valid contract and of the nature of the elements of which it is composed. The following sections, 24-30, declare what agreements are void. These matters in the original draft are mixed up indiscriminately with its other provisions. Thus, agreements void for uncertainty are dealt with in section 12, between the subject of mistake and that of consideration. It is not expressly said, but only implied (section 13), that an unlawful agreement is void, and section 13 is somewhat clumsy. Nothing is said as to agreements in restraint of marriage or trade, or as to wagers, or as to agreements not to sue. We have recommended distinct provisions to be made for the effect of an unlawful object or consideration, the absence of consideration, contracts in restraint of marriage or trade, and contracts in restraint of legal proceedings; contracts the meaning of which cannot be ascertained, and contracts by way of wager. As to contracts in restraint of legal proceedings, we have provided, in section 28, that while, on the one hand, a contract, by which a person is restricted absolutely from enforcing his claims in Court, is void; on the other hand, parties may agree that, in the event of a dispute arising between them in respect to any specified matters, it shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable. We recommend that, when such a contract to refer has been made, it shall be a bar to any action brought in respect of the matters to which it relates, other than an action for the amount awarded in arbitration. This appears to us to embody the results of the latest English decisions, and to be consonant with justice and good sense.

9. Sections 14-17 of the original Bill are replaced by chapter III of the Draft now submitted, headed "Of Contingent Contracts." The original sections appeared to us to mix up two matters which are essentially distinct, namely, (1) agreements contingent upon an event collateral to the agreement—as, if A contracts to pay a sum of money to B, if B lives to be twenty-one. (2) Reciprocal promises—as, if A contracts to pay for a horse, if B delivers it. The result is a good deal of confusion. It is difficult to see why sections 14, 15 and 16 of the Bill are separated by nine other sections from the seven sections which are put under the heading "Of Conditional Contracts." When carefully examined, it will be apparent that the attempt to simplify by neglecting the distinction to which we have referred has caused this, and that the result is to make a clear subject obscure. It also introduces, we think, positive error. Thus, sections 26 and 27, taken together, provide that 'an engagement by contract may be made with the condition superadded that it shall be terminated in case a specified uncertain event shall happen;' and that, 'if at the time of the contract the event is repugnant to law or morality,' the condition is invalid. Suppose a man engages, by contract, to carry goods safely unless they are taken from him by thieves or robbers, the contract is clearly good; yet, under the terms of these sections, the condition would be void. This arises from the neglect to distinguish between conditions independent of a contract, and conditions which form a part of the contract. It is surely one thing to contract to indemnify a man if some one else robs him, and another to contract to indemnify him if he robs some one else. Each contract contemplates the commission of a crime; but the first regards it simply as a possible contingency, the second involves a promise to commit it. Besides this, it is extremely difficult to make any clear distinction, if the arrangement of the Bill is maintained, between the provisions of sections 26 and 27, referred to above, and those of section 13, which relates to consideration. According to section 13, it is essential to the validity of a contract that there should be a good consideration, and lawfulness is essential to the goodness of a consideration. By section 14, a condition may be something which constitutes the consideration; by sections 26 and 27 the condition 'must not be repugnant to law.' If the condition is part of the consideration, sections 26 and 27 re-enact, in a somewhat obscure and disjointed way, what is enacted much more clearly by section 13.

10. The present draft is intended to avoid this by separating three cases—

1. The consideration for the contract. This is provided for in sections 24 and 25.

2. The case of agreements made contingently upon some event independent of them. This is provided for in chapter III, sections 31-36.

3. The effect which the relation between reciprocal promises has on the order in which they are to be performed. This is provided for in sections 51 to 58, which form one of the sub-divisions of chapter IV "Of the Performance of Contracts."

11. No doubt the word 'condition,' or 'conditional,' might be applied in a popular way to each of these three matters. If A's promise is the consideration of B's; or if A makes a promise to B contingently on C's death; or if the intention is to say that, if A promises to pay for B's horse on delivery, A need not pay unless and until B is ready to deliver—it might be said that the consideration of A's promise in the first case, C's death in the second case, and B's readiness to deliver the horse in the third case, were respectively the *conditions* of A's promise, or that A's promise was *conditional* upon them; but we think that, if the sections to which we have referred (namely, 24 and 25, and 51 to 58 of the draft) are read and compared with the corresponding sections (13 to 31) in the Bill, it will be found that the distribution of the subject under the three heads now suggested makes it much clearer.

12. Section 32 of the original Bill has been omitted. Its substance is disposed of in the Evidence Act.

13. The sections in the Bill (33 to 51 inclusive) relating to Performance of Contracts are not arranged upon any particular principle, though they appear sound in substance. We propose to arrange them as follows:—

Contracts which must be performed :

By whom contracts must be performed :

Time and place for performance :

Order of performance of reciprocal promises :

Appropriation of payments :

Contracts which need not be performed.

14. These headings appear to place the subject in its natural order, which is not the case with the original Bill. The arrangement there adopted is such, that the general principle that each party to a contract must perform his own part in it, unless he is in some way excused from doing so, is nowhere plainly laid down. The first section (33), which relates to the subject, lays down a principle of no great or general importance, namely, that a man may, in certain cases, perform a contract vicariously; so, too, the draft Bill puts the subject of Tender (sections 45, 46) at the very end of the chapter. It ought, in our opinion, to come at the beginning, as a qualification upon the general rule that contracts must be performed. We have accordingly placed it there (see sections 37, 38). As to the question by whom contracts should be performed, the original Bill is arranged in a rather confused way. In sections 33 and 34 it provides for two unimportant matters about delegating the performance of a contract, and accepting performance by a third person. It then goes on (sections 35, 36), to a most important matter—dispensation from an old contract and the substitution of one contract for another; and, after an interval of ten sections, it provides for the devolution of liabilities on the representatives of contractors (sections 47-50). It appears to us that sections 35 and 36 fall properly under the head of 'Contracts which need not be performed;' and sections 47 to 50 under the head of 'Persons by whom Contracts must be performed.'

15. Part III of the Bill relates to what are commonly called quasi-contracts. As to this we have omitted sections 54 and 55. The Law of Evidence provides, to a large extent, for the cases referred to in section 54, by the rule that one party to a contract is precluded from setting up a state of facts other than that which he caused or intentionally allowed the other party to believe to exist. Section 55 seems to us to belong more properly to the law of torts. Illustration (c), especially, is a pure case of an action for misrepresentation, and the mode of computing the damage which the misrepresentation has occasioned.

16. We have omitted all reference to special branches of the law of contract, which, at present, are regulated either by express legislation or recognized custom, *e. g.*, the law of Shipping, of Bills of Exchange, Insurance, Master and Servant, Carriers, &c. This omission renders the present Bill so far incomplete; but we consider this incompleteness a less evil than the inconvenience of dealing with so many varied and intricate subjects in a single enactment. It will be easy at a future period, when the present Bill has been for a time in operation, and its results have been practically tested, to deal with all or any of the subjects above referred to, and to add them as a new chapter to the Act. With this view leave has already been asked to introduce a Bill to amend and consolidate the law relating to Carriers, and it would no doubt be desirable that the law of master and servant should at an early date be put into a clearer form than that in which it is at present. No sufficient information has at present been collected to render legislation on this subject safe.

17. As to the question of title in the vendor, the original Bill provided that a *bona fide* purchase from the person in possession of goods should have the effect of passing the ownership, provided that the circumstances were not such as to raise a presumption that the vendor had no right to sell. The propriety of this provision was much discussed, and its probable result in facilitating the disposal of stolen property strongly insisted upon. When an innocent purchaser, it is a mere question of expediency as to which of the two shall bear the loss of the transaction. It is difficult to lay down any general rule, grounded on

equitable considerations, because the blame, if any, in the transaction may quite as easily attach to one party as the other. The owner may have used every reasonable precaution and the purchaser may have been grossly negligent, or the purchaser may have been cautious and the owner negligent. After much consideration, we have resolved on abandoning the principle laid down in section 75 of the original Bill, and have provided for the subject in section 108 of the draft now submitted. We propose that a seller shall be unable to give a better title to goods than he has himself, except in the following cases, namely:—

1. When the seller is by consent of the owner in possession of a dock-warrant or other document showing title to the goods sold :
2. When the seller is one of several joint owners of the goods sold and in possession of the goods by permission of the other joint owners :
3. When the seller has obtained possession of the goods under a voidable contract and the contract has not been avoided before the sale; provided that the circumstances which render the contract voidable do not amount to an offence.

In each of the above cases, it is necessary that the purchaser should have acted on good faith, and that the circumstances should not have been such as to give him reasonable ground to suspect that the seller had a right to sell.

18. With regard to the distinction between "penalties" and "liquidated damages," we have seen reason to modify the terms of the original section (53). It provides that, "when a contract has been broken, if a sum is named in the contract itself as the amount to be paid in the case of such breach, the amount so named shall be paid accordingly;" in other words, it treats all such sums as if they were liquidated damages, and never regards them as penalties. We are quite conscious that it is highly desirable to simplify the law by removing the distinction between penalties and liquidated damages; but we are clearly of opinion that, under the peculiar circumstances of this country, the best way to do so is to provide that all such sums shall be treated as penalties. It is notoriously the practice of the Natives to introduce heavy penal stipulations into their agreements, and these are always intended to operate simply *in terrorem*. It may, no doubt, be said that, by changing the law, the people might be led in time to a better system. But partly through the tenacity of habit in the Natives, partly through the time which it takes to diffuse acquaintance with a new rule, and partly also through the fact that, in the case of bond-debts, it is the creditor who frames the instrument, there would be a great deal of positive suffering inflicted, and possibly more than the legislature has a right to impose, before the result aimed at by the Bill could be attained. We have accordingly altered the first clause of this section as follows:—

"When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named."

We have provided, however, that when, by the provisions of any law, a person binds himself under a penalty to perform any condition, he shall be liable to pay the whole of the penalty if he fails to perform the condition. This is intended to provide for the case of recognizances, bail-bonds, and the like.

19. Section 152 of the Bill provides that, "where the bailment is gratuitous, the bailor is entitled at any time, upon reasonable notice, to the restoration of the goods bailed." We have substituted (section 159) the following provision grounded on the New York Code, paragraph 958:—"The lender of a thing for use may at any time require its return if the loan was gratuitous, even though he lent it for a specified time or purpose. But if, on the faith of such loan, the borrower has acted in such a manner that the return of the thing before the time agreed upon would cause him loss exceeding the benefit derived actually by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived."

20. In section 159 of the Bill we have inserted (section 166) the words "in good faith" before "delivers."

21. Section 161.—After this section we have introduced, from the New York Code, § 943, the following clause (169):—

"When a thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found, or if he refuses upon demand to pay the lawful charges of the finder, the finder may sell it—

- (1) when the thing is in danger of perishing or of losing the greater part of its value; or
- (2) when the lawful charges of the finder in respect of the thing found amount to two-thirds of its value."

22. Section 163 of the original Bill provides that, "in the absence of any agreement to the contrary, bankers, factors, and wharfingers have no right to retain any goods bailed to them as a security for a general balance of account." No reason is given for the abolition of the general lien in these cases, and we think it expedient to alter the section (171) thus:—

"Bankers, factors, wharfingers, attorneys of a High Court, and policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account,

any goods bailed to them, but no other persons have a right to retain as a security for such balance, goods bailed to them unless there is an express contract to that effect."

23. Section 170 of the original Bill provided that "a person who is in possession of goods, or of any bill of lading, dock-warrant, warehousekeeper's certificate, warrant or order for delivery, or any other document of title to goods, may make a valid pledge of such goods, or documents: Provided that the pawnee acts in good faith and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly."

To this we have added (section 178) a proviso which seems to us necessary with a view to discouraging the pledge of stolen property—

"Provided also that such goods or documents have not been obtained from their lawful owner or from any person in lawful custody of them by means of an offence or fraud."

24. Section 186 of the original Bill forbids an agent to employ another to perform acts which he has undertaken to perform personally. We have added, in section 190 of our draft, the words "unless, by the ordinary custom of trade, a sub-agent may, or, from the nature of the agency, a sub-agent must, be employed."

25. Section 191.—This section of the original Bill provides that an agent, in the absence of his principal's directions, is bound to conduct his business according to the custom which prevails in doing business of the same kind. We have added, in section 211 of our draft, the words "at the place where the agent conducts such business" [*Ireland v. Livingston*, 2. L. R. Q. B. 107, per Shee, J.]

We have provided in section 217 that "an agent may retain, out of any sums received on account of the principal in the business of the agency, all monies due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent."

26. Section 201 of the original Bill provides that "gross" misconduct in the business of an agency shall disentitle the agent to remuneration in respect of the matter misconducted. The illustrations, however, are not of gross misconduct, and we think that any misconduct should disentitle him. We have omitted the epithet 'gross,' and, in illustration (a), we have changed 'insufficient' into 'bad.'

27. Section 202.—This section of the original Bill declares the agent's lien on "goods, papers and other property of the principal." We have, in section 220 of our draft, inserted the words "whether moveable or immoveable," after "property."

28. Section 203 of the original Bill provides that, "where acts are done by one person on behalf of another, *but without his knowledge*, he may elect to ratify or to disown" them. We have inserted, in section 196 of the present Bill, after "knowledge," the words "or authority."

Section 226 of the original Bill we have altered (section 202 of our draft) thus:

29. "Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, *in the absence of an express contract*, be terminated to the prejudice of such interest."

30. Section 262.—We propose to limit the winding-up jurisdiction conferred by section 262 of the original Bill (section 265 of our draft) to "the Court not inferior to the Court of a District Judge within the local limits of whose jurisdiction the place, or principal place of business of the firm is situate."

31. We have, in numerous instances throughout the Bill, omitted illustrations, wherever they appeared to us either to be unnecessary, or too complicated to be readily intelligible, or when, as being the result of English decisions, they introduced collateral circumstances and principles other than those which they were intended to illustrate, and were thus liable to be misunderstood, except when read in connection with the whole of the surrounding facts.

32. Subject to these amendments we recommend that the Bill be passed.

J. F. STEPHEN.
J. STRACHEY.
R. TEMPLE.
J. F. D. INGLIS.
W. ROBINSON.
F. S. CHAPMAN.
R. STEWART.
J. R. BULLEN SMITH.
F. R. COCKERELL.

The 12th March 1872.

THE INDIAN CONTRACT BILL.

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SCHEDULE.

THE INDIAN CONTRACT BILL.

As amended by the Select Committee.

WHEREAS it is expedient to define and amend certain parts of the law relating to contracts; It is hereby enacted as follows:—

Preamble.

PRELIMINARY.

Short title. 1. This Act may be called "The Indian Contract Act, 1872."

It extends to the whole of British India, and it shall come into force on the first day of September 1872.

Extent. Commencement.

The enactments mentioned in the schedule hereto are repealed to the extent specified in third column thereof; but nothing herein contained shall affect

Enactments repealed.

the provisions of any Statute, Act, or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

2. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

(a.)—When one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

(b.)—When the person, to whom the proposal is made, signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise.

(c.)—The person making the proposal is called the 'promisor,' and the person accepting the proposal is called the 'promisee.'

(d.)—When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.

(e.)—Every promise and every set of promises, forming the consideration for each other, is an agreement.

Promises which form the consideration or part of the consideration for each other, are called reciprocal promises.

(f.)—An agreement not enforceable by law is said to be void.

(g.)—An agreement enforceable by law is a contract.

(h.)—An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.

(i.)—A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

CHAPTER I.

OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS.

3. The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are said to be made by any act or omission of the party proposing, accepting or revoking, by which he intends to communicate such proposal, revocation or acceptance, or which has the effect of communicating them respectively.

4. The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor;

as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete,

as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it

as against the person to whom it is made, when it comes to his knowledge.

Illustrations.

(a.) A proposes, by letter, to sell a house to B at a certain price.

The communication of the proposal is complete when B receives the letter.

(b.) B accepts A's proposal by a letter sent by post.

The communication of the acceptance is complete, as against A, when the letter is posted; as against B, when the letter is received by A.

(c.) A revokes his proposal by telegram.

The revocation is complete as against A when the telegram is despatched. It is complete as against B when B receives it.

B revokes his acceptance by telegram. His revocation is complete as against B when the telegram is despatched, and as against A when it reaches him.

5. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustrations.

A proposes by a letter sent by post to sell his house to B.

B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his letter of acceptance at any time before or at the moment when it reaches A, but not afterwards.

Revocation how made. 6. A proposal is revoked—

(1) by the communication of notice of revocation by the proposer to the other party;

(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;

(3) by the failure of the acceptor to fulfil a condition precedent to acceptance; or

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Acceptance must be absolute. 7. In order to convert a proposal into a promise the acceptance must—

(1) be absolute and unqualified;

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but, if he fails to do so, he accepts the acceptance.

8. Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

Acceptance by performing conditions.

9. In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

Promises, express and implied.

CHAPTER II.

OF CONTRACTS, VOIDABLE CONTRACTS, AND VOID AGREEMENTS.

10. All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

What agreements are contracts.

Nothing herein contained shall affect any law in force in British India, and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

11. Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

Who are competent to contract.

12. A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

What is a sound mind for the purposes of contracting.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Illustrations.

(a.) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(b.) A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

13. Two or more persons are said to consent when they agree upon the same thing in the same sense.

Consent defined.

14. Consent is said to be free when it is not caused by—

Free consent defined.

- (1) coercion, as defined in section fifteen, or
- (2) undue influence, as defined in section sixteen, or
- (3) fraud, as defined in section seventeen, or
- (4) misrepresentation, as defined in section eighteen, or
- (5) mistake.

Consent is said to be so caused when it would not have been given but for the existence of such

coercion, undue influence, fraud, misrepresentation or mistake.

15. Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Coercion defined.

Explanation.—It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed.

Illustration.

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to intimidation under the Indian Penal Code;

A afterwards sues B for breach of contract at Calcutta.

A has employed coercion, although his act is not an offence by the law of England, and although section 509 of the Indian Penal Code was not in force at the time or place where the act was done.

16. Undue influence is said to be employed in the following cases:—

Undue influence defined.

(1.)—When a person in whom confidence is reposed by another, or who holds a real or apparent authority over that other, makes use of such confidence or authority for the purpose of obtaining an advantage over that other, which, but for such confidence or authority, he could not have obtained.

(2.)—When a person whose mind is enfeebled by old age, illness, or mental or bodily distress is so treated as to make him consent to that to which, but for such treatment, he would not have consented, although such treatment may not amount to coercion.

Illustrations.

(1.) A, a young woman who has resided during her minority in the family of B, her guardian, continues to reside with him after attaining majority, and is induced, by means of his influence, to enter into a contract with him which is disadvantageous to herself. B employs undue influence.

(2.) A, having advanced money to his son, B, during his minority, upon B's coming of age, obtains, by parental influence, a bond from B for a greater amount than the sum due upon the advance. A employs undue influence.

(3.) A is induced, by B's influence over him as his legal adviser, to convey an estate to B for his benefit. B employs undue influence.

(4.) A, a man enfeebled by disease or age, is induced by B's influence over him, as his medical attendant, to agree to pay B an unreasonable sum for his professional assistance during the rest of A's life. B employs undue influence.

17. Fraud means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:—

Fraud defined.

(1.)—The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2.)—The active concealment of a fact by one having knowledge or belief of the fact;

(3.)—A promise made without any intention of performing it;

(4.)—Any other act fitted to deceive;

(5.)—Any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a

contract is not fraud, unless the circumstances of the case are such that under the circumstances of the case, it is the duty of the person keeping silence to speak, or unless his silence in itself is equivalent to speech.

Illustrations.

(a.) A and B are in treaty for a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.

(b.) B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

(c.) B says to A, "If you do not deny it, I shall assume that the horse is sound;" A says nothing. Here A's silence is equivalent to speech.

(d.) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B.

Misrepresentation defined.

18. Misrepresentation means and includes—

- (1)—The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
- (2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him;
- (3) causing a party to an agreement, however innocently, to make a mistake as to the substance of the thing which is the subject of the agreement.

19. When consent to an agreement is caused

Agreements caused by fraud or misrepresentation. by coercion, undue influence, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

The party whose consent was so caused may, if he thinks fit, insist that the contract shall be performed and that he shall be put in the position in which he would have been if the representations made had been true.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section seventeen, the contract, nevertheless, is not voidable, if the party, whose consent was obtained thereby, had the means of discovering the truth with ordinary diligence.

Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised or to whom such misrepresentation was made, does not render a contract voidable.

Illustrations.

(a.) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.

(b.) A, by a misrepresentation, leads B to believe erroneously that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

(c.) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and the mortgage debt redeemed.

(d.) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an under-value. The contract is voidable at the option of A.

(e.) A is entitled to succeed to an estate at the death of B; B dies: C, having received intelligence of B's death, prevents the intelligence reaching A; and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

20. Where both the parties to an agreement

are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Explanation.—An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement, is not to be considered a mistake as to a matter of fact.

Illustrations.

(a.) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of these facts. The agreement is void.

(b.) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(c.) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

21. A contract is not voidable because it

Effect of mistakes as to law. was caused by a mistake as to any law in force in British India; but a mistake as to a law not in force in British India has the same effect as a mistake of fact.

Illustrations.

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation: the contract is not voidable.

A and B make a contract grounded on an erroneous belief as to the law regulating bills of exchange in France: the contract is voidable.

22. A contract is not voidable because merely

Mistake of one party it was caused by one of the parties to it being under a mistake as to a matter of fact.

What considerations and objects are lawful and what not. 23. The consideration or object of an agreement is lawful, unless—

- it is forbidden by law; or
- is of such a nature that, if permitted, it would defeat the provisions of any law; or
- is fraudulent; or
- involves or implies injury to the person or property of another; or
- the Court regards it as immoral or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful, is void.

Illustrations.

(a.) A agrees to sell his house to B for 10,000 rupees. Here B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations.

(b.) A promises to pay B 1,000 rupees at the end of six months if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here the promise of each party is the consideration for the promise of the other party: and they are lawful considerations.

(c.) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a

certain voyage. Here A's promise is the consideration for B's payment, and B's payment is the consideration for A's promise, and these are lawful considerations.

(d.) A promises to maintain B's child, and B promises to pay A 1,000 rupees yearly for the purpose. Here the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(e.) A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(f.) A promises to obtain for B an employment in the public service, and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.

(g.) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment by A on his principal.

(h.) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(i.) A's estate is sold for arrears of revenue under the provisions of an Act of the legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction in effect a purchase by the defaulter and would so defeat the object of the law.

(j.) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.

(k.) A engages her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code.

VOID AGREEMENTS.

24. If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

Illustration.

A promises to superintend, on behalf of B, a legal manufacture of indigo and an illegal traffic in other articles. B promises to pay to A a salary of 10,000 rupees a year. The agreement is void, the object of A's promise, and the consideration for B's promise, being in part unlawful.

25. An agreement made without consideration is void unless—

(1) it is expressed in writing and registered under the law for the time being in force for the registration of assurances; or unless—

(2) it is a promise to compensate wholly or in part a person who has already voluntarily done something for the promisor or something which the promisor was legally compellable to do; or

(3) it is a promise, made in writing and signed by the person to be charged therewith or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Explanation.—Nothing in this section shall affect the validity as between the donor and donee of any gift actually made.

Illustrations.

(a.) A promises for no consideration to give to B Rs. 1,000. This is a void agreement.

(b.) A puts his promise to give Rs. 1,000 to B into writing, and registers it. This is a contract.

(c.) A finds B's purse and gives it to him. B promises to give A Rs. 50. This is a contract.

(d.) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(e.) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A verbally promises to pay B Rs. 500 on account of the debt. This is a contract.

26. Every agreement in restraint of the marriage of any person other than a minor, is void.

27. Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Exception 1.—One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business within specified local limits so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

Exception 2.—Partners may, upon or in anticipation of a dissolution of the partnership, agree that some or all of them will not carry on a business, similar to that of the partnership, within such local limits as are referred to in the last exception.

Exception 3.—Partners may agree that some one or all of them will not carry on any business other than that of the partnership, during the continuance of the partnership.

28. Every agreement by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Exception 1.—This section shall not render illegal a contract by which two or more persons agree that any dispute that may arise between them in respect of any specified matters shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the matter so referred.

When such a contract to refer has been made, a suit may be brought for its specific performance, and if a suit other than for such specific performance, or for the recovery of the amount so awarded, is brought by one party to such contract against any other such party, in respect of any matter which they have so agreed to refer, the existence of such contract shall be a bar to the action.

Exception 2.—Nor shall this section render illegal any contract in writing by which two or more persons agree to refer to arbitration any question between them which has already arisen or affect any provision of any law in force for the time being as to references to arbitration.

29. Agreements the meaning of which is not certain, or capable of being made certain, are void.

Illustrations.

(a.) A agrees to sell to B 'a hundred tons of oil.' There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(b.) A agrees to sell to B one hundred tons of oil of a specified description known as an article of commerce. There is no uncertainty here to make the agreement void.

(c.) A, who is a dealer in coconut-oil only, agrees to sell to B "one hundred tons of oil." The nature of A's trade

affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of coconut-oil.

(d.) A agrees to sell to B "all the grain in my granary at Ramnagar." There is no uncertainty here to make the agreement void.

(e.) A agrees to sell to B one thousand mounds of rice at a price to be fixed by C. As the subject of the agreement is capable of being made certain, there is no uncertainty here to make it void.

(f.) A agrees to sell B 'my white horse for rupees five hundred or rupees one thousand.' There is nothing to show which of the two prices was to be given. The agreement is void.

30. Agreements by way of wager are void, and no suit shall be brought for recovering anything alleged to be won on any wager or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

CHAPTER III.

Of Contingent Contracts.

31. A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Illustration.

A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract.

32. Contingent contracts to do or not to do anything if an uncertain future event happens, cannot be enforced by law unless and until that event has happened.

If the event becomes impossible such contracts become void.

Illustrations.

(a.) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's lifetime.

(b.) A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.

(c.) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

33. Contingent contracts to do or not to do anything if an uncertain future event does not happen, can be enforced when the happening of that event becomes impossible, and not before.

Illustration.

A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

34. If the future event on which a contract is contingent is the way in which a living person's future conduct, unspecified time, the event shall be considered to become impossible when the person does anything which renders it impossible that he should do the thing within any definite time, or otherwise than under further contingencies.

(a.) A agrees to pay B a sum of money if B marries C.

C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die, and that C may afterwards marry B.

35. Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time, become void if, at the expiration of time fixed, the event has not

happened, or if, before the time fixed, the event becomes impossible.

Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time has expired and the event has not happened, or, before the time has expired, if it becomes certain that the event will not happen.

Illustrations.

(a.) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.

(b.) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

36. Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Illustrations.

(a.) A agrees to pay B 1,000 rupees if two straight lines should enclose a space. The agreement is void.

(b.) A agrees to pay B 1,000 rupees if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

CHAPTER IV.

OF THE PERFORMANCE OF CONTRACTS.

CONTRACTS WHICH MUST BE PERFORMED.

37. The parties to a contract must either perform, or offer to perform, their respective promises, or make compensation to the promisees for the non-performance of them, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisors in case of their death before performance, unless a contrary intention appears from the contract.

Illustrations.

(a.) A promises to deliver goods to B on a certain day on payment of Rs. 1,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs. 1,000 to A's representatives.

(b.) A promises to paint a picture for B by a certain day at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

38. Where a promisor has made an offer of performance to the promisee and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Every such offer must fulfil the following conditions:—

1. It must be unconditional.

2. It must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound to do by his promise.

3. If the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to offer.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

Illustration.

A contracts to deliver to B at his warehouse on the 1st March 1872, 100 bales of cotton of a particular quality. In order to make an offer of performance with the effect stated in this section, A must bring the cotton to B's warehouse under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

39. When a party to a contract has refused

Power to terminate contract on refusal of party to perform it wholly.

to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to

the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

Illustrations.

(a.) A, a singer, enters into an engagement with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night the singer wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

(b.) A, a singer, enters into an engagement with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night the singer wilfully absents herself. With the assent of B she sings on the seventh night. B has signified his acquiescence in the continuance of the contract and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night.

BY WHOM CONTRACTS MUST BE PERFORMED.

40. If it appears from the nature of the case

Person by whom promise is to be performed.

that it was the intention of the parties to any contract that any promise contained in

it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

Illustrations.

(a.) A promises to pay B a sum of money. He may perform this promise, either by personally paying the money to B, or by causing it to be paid to B by another; and, if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

(b.) A promises to paint a picture for B. A must perform this promise personally.

41. When a promisee accepts performance

Effect of accepting performance from a third person.

of the promise from a third person, he cannot afterwards enforce it against the promisor.

42. When two or more persons have made a

Devolution of joint liabilities.

joint promise, then, unless a contrary intention appears by the contract, all such persons

during their joint lives, and, after the death of any of them, his representative jointly with the survivor or survivors, and, after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

43. When two or more persons make a joint

Any one of joint promisors may be compelled to perform.

promise, the promisee may, in the absence of express agreement to the contrary, compel any one of the promisors to perform the whole of the promise.

Each of two or more joint promisors may

Each promisor may compel contribution.

compel every other joint promisor to contribute equally with himself to the performance of the promise

unless a contrary intention appears from the contract.

If any one of two or more joint promisors makes

Sharing of loss by default in such contribution, default. the remaining promisors must bear the loss arising from such default in equal shares.

Explanation.—Nothing in this section contained shall prevent a surety from recovering from his principal payments made by the surety on behalf of the principal, or entitle the principal to recover any thing from the surety on account of such payments.

Illustrations.

(a.) A, B and C jointly promise to pay D 3,000 rupees. D may compel either A or B or C to pay him 3,000 rupees.

(b.) A, B and C jointly promise to pay D the sum of 3,000 rupees. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 rupees from A's estate, and 1,250 rupees from B.

(c.) A, B and C are under a joint promise to pay D 3,000 rupees. C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive 1,500 rupees from B.

(d.) A, B and C are under a joint promise to pay D 3,000 rupees, A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

44. Where two or more persons have made

a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free such joint promisor from responsibility to the other joint promisor or joint promisors.

45. When a person has made a promise to

two or more persons jointly, then, unless a contrary intention appears by the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.

Illustration.

A, in consideration of 5,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and, after the death of C, with the representatives of B and C jointly.

TIME AND PLACE FOR PERFORMANCE.

46. Where, by the contract, a promisor is to

perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Explanation.—The question 'What is a reasonable time' is, in each particular case, a question of fact.

47. When a promise is to be performed

on a certain day, and the promisor has undertaken to perform it without application, he may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

Illustration.

A promises to deliver goods at B's warehouse on the 1st January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it; and they are not received. A has not performed his promise.

48. When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application, it is the duty of the

Application for performance at a proper time and place.

promisee to apply for performance at a proper place and within the usual hours of business.

Explanation.—The question 'What is a proper time and place' is, in each particular case, a question of fact.

49. When a promise is to be performed

Place for performance of engagement where no application to be made and no place fixed.

without application, and no place is fixed for the performance of it, it is the duty of the promisor to

apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

Illustration.

A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

50. The performance of

Performance in manner or at time prescribed or sanctioned by person entitled to claim it.

any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

Illustrations.

(a.) B owes A 2,000 rupees. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. This is a good payment by B.

(b.) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement. This amounts to a payment by A and B, respectively, of the sums which they owed to each other.

(c.) A owes B 2,000 rupees. B accepts some of A's goods in reduction of the debt. The delivery of the goods operates as a part payment.

(d.) A desires B, who owes him Rs. 100, to send him a note for Rs. 100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A.

ORDER OF PERFORMANCE OF RECIPROCAL PROMISES.

51. When a contract consists of reciprocal promises

Promisor not bound to perform unless reciprocal promisee ready and willing to perform.

to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Illustrations.

(a.) A and B contract that A shall deliver goods to B to be paid for by B on delivery.

A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery.

B need not pay for the goods, unless A is ready and willing to deliver them on payment.

(b.) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery.

A need not deliver, unless B is ready and willing to pay the first instalment on delivery.

B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment.

52. Where the order in which reciprocal promises

are to be performed is expressly fixed by the contract, they shall be performed in that order; and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

Illustrations.

(a.) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

(b.) A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

53. When a contract contains reciprocal promises, and one party to the

contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented, and he is entitled to compensation from the other party for any loss which he may have sustained in consequence of the non-performance of the contract.

Illustration.

A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B, and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

54. When a contract consists of reciprocal promises, such that one of them

cannot be performed, or that its performance cannot be claimed, till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may have sustained by the non-performance of the contract.

Illustrations.

(a.) A hires B's ship to take in and convey from Calcutta to the Mauritius a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A cannot claim the performance of B's promise and must make compensation to B for his failure.

(b.) A contracts with B to execute certain builders' work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-execution of the contract.

(c.) A contracts with B to deliver to him at a specified price certain merchandise on board a ship which cannot arrive for a month, and B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week. A's promise to deliver need not be performed and B must make compensation.

(d.) A promises B to sell him one hundred bales of merchandise, to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed, and A must make compensation.

55. When any party to a contract promises to

do a certain thing at or before a specified time or certain things at or before specified times, and fails to do them at those times, the contract, or so much of it as has not been performed, becomes voidable, at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to perform at the time agreed, but the promisee is entitled to compensation from the promisor for any loss he may have incurred by such failure.

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by its non-performance at the proper time, unless, at the time of such acceptance, he gives notice of his intention to do so to the promisee.

56. An agreement to do an act impossible in itself is void.

Promise to do an impossible act or one which afterwards becomes illegal. A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Where one person contracts to do something which he knows, or with reasonable diligence might have known, and which the other party to the contract did not know, to be impossible, or unlawful, the person so contracting is bound to make compensation to such other party for any loss which he has sustained by the non-performance of the promise.

Illustrations.

(a.) A agrees with B to discover treasure by magic. The agreement is void.

(b.) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

(c.) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy, A must make compensation to B for the loss caused to her by the non-performance of his promise.

(d.) A contracts to take in cargo for B at a foreign port. The Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.

(e.) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions B is too ill to act. The contract to act on those occasions becomes void.

57. If persons reciprocally promise to act in a certain way, and, under specified circumstances, to act in a certain other way, and, if any of the promises to be substituted under those circumstances for the first set of promises are for an unlawful object or consideration, the set of promises to be substituted are a void agreement; but the set of promises for which they are to be substituted may be a contract.

Alternative reciprocal promises one set of which is unlawful.

A and B agree that A shall sell B a house for 10,000 rupees, but that, if B uses it as a gambling house, he shall pay A 50,000 rupees for it.

Illustration.

The first set of reciprocal promises, namely, to sell the house and to pay 10,000 rupees for it, form a valid contract.

The second set are for an unlawful object, namely, that B may use the house as a gambling house, and are a void agreement.

Reciprocal promises one of which is in the alternative, one branch of the alternative being unlawful.

58. In the case of an alternative promise one branch of which is legal and the other illegal, the legal branch alone can be enforced.

Illustration.

A and B agree that A shall pay B 1,000 rupees for which B shall afterwards deliver to A either rice or smuggled opium.

This is a valid contract to deliver rice and a void agreement as to the opium.

APPROPRIATION OF PAYMENTS.

59. Where a man, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying, that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Where there are several distinct debts and the debt to which payment is to be applied is indicated.

to one person, makes a payment to him, either with express intimation, or under circumstances implying, that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Illustrations.

(a.) A owes B (among other debts) 1,000 rupees upon a promissory note, which falls due on the 1st June. He owes B no other debt of that amount. On the 1st June A pays to B 1,000 rupees. The payment is to be applied to the discharge of the promissory note.

(b.) A owes to B (among other debts) the sum of 567 rupees. B writes to A and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

60. Where the debtor has omitted to intimate, and there are no other circumstances indicating, to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the payer, whether its recovery is or is not barred by the law in force for the time being relating to the limitation of suits.

Where there are several distinct debts and the debt to which payment is to be applied is not indicated.

and there are no other circumstances indicating, to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the payer, whether its recovery is or is not barred by the law in force for the time being relating to the limitation of suits.

61. Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not recoverable under the law relating to the limitation of suits. If they are of equal standing, the payment shall be applied in discharge of each proportionably.

Where neither party makes any appropriation. applied in discharge of the debts in order of time, whether they are or are not recoverable under the law relating to the limitation of suits. If they are of equal standing, the payment shall be applied in discharge of each proportionably.

CONTRACTS WHICH NEED NOT BE PERFORMED.

62. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Contracts may be rescinded or altered.

Illustrations.

(a.) A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(b.) A owes B 10,000 rupees. A enters into an arrangement with B, and gives him a mortgage of A's estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old.

(c.) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees. B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into.

63. Every promisee may dispense with, or remit wholly or in part, the performance of the promise made to him, or may extend the time for it, or may accept instead of it any satisfaction which he thinks fit.

Dispensation with, or remittance of, or acceptance of, satisfaction in lieu of performance.

Every promisee may dispense with, or remit wholly or in part, the performance of the promise made to him, or may extend the time for it, or may accept instead of it any satisfaction which he thinks fit.

Illustrations.

(a.) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

(b.) A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

(c.) A owes B 5,000 rupees. C pays to B 1,000 rupees, and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.

(d.) A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount, gives to B, and B, in satisfaction thereof, accepts, the sum of 2,000 rupees. This is a discharge of the whole debt, whatever may be its amount.

(e.) A owes B 2,000 rupees, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a compensation of eight annas in the rupee upon their respective demands. Payment to B of 1,000 rupees is a discharge of B's demand.

64. When a person, at whose option a contract is voidable, rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.

65. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it or to make compensation for it to the person from whom he received it.

Illustrations.

(a.) A pays B 1,000 rupees in consideration of A's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the 1,000 rupees.

(b.) A contracts with B to deliver to him 250 maunds of rice before the 1st of May. A delivers 130 maunds only before that day, and none after. B retains the 130 maunds after the 1st of May. He is bound to pay A for them.

(c.) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B must pay A for the five nights on which she had sung.

(d.) A contracts to sing for B at a concert for 1,000 rupees, which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of the profits which he would have made if A had been able to sing, but must refund the 1,000 rupees paid in advance.

66. The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal.

67. If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Illustration.

A contracts with B to repair B's house.

B neglects or refuses to point out to A the places in which his house requires repair.

B is excused for the non-performance of the contract, if it is caused by such neglect or refusal.

CHAPTER V.

OF CERTAIN OBLIGATIONS RESEMBLING THOSE CREATED BY CONTRACT.

68. If a person incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Illustrations.

(a.) A supplies B, a minor, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

(b.) A supplies the wife and children of B, a lunatic with necessaries suitable to their condition in life. A is entitled to be reimbursed from B's property.

69. A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

Illustration.

B holds land in Bengal on a lease granted by A, the zemindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

70. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and the other enjoys the benefit thereof, the latter is bound to restore, or to make compensation to the former in respect of, the thing so done or delivered.

Illustration.

(a.) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

(b.) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

71. A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.

72. A person to whom money has been paid by mistake, or under coercion, must repay it.

Illustrations.

(a.) A and B jointly owe 100 rupees to C. A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(b.) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

CHAPTER VI.

OF THE CONSEQUENCES OF THE BREACH OF CONTRACT
AND NON-PERFORMANCE OF OBLIGATIONS.

73. A person who rightfully rescinds a contract, is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

Illustration.

(a.) A, a singer contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A wilfully absents himself from the theatre, and B, in consequence, rescinds the contract. A is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

74. When a contract has been broken, and has not been discharged, the party who suffers by such breach is entitled to receive from the party, who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

When an obligation resembling those created by contract has been incurred and has not been discharged, any person, injured by the failure to discharge it, is entitled to receive the same compensation from the party in default as if he had contracted to discharge it and had broken his contract.

Explanation.—In estimating the loss, the means which existed of remedying the inconvenience caused by the non-performance of the contract, must be taken into account.

Illustrations.

(a.) A contracts to sell and deliver 50 maunds of saltpetre to B at a certain price, to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(b.) A hires B's ship to go to Bombay and there take on board, on the 1st of January, a cargo (which A is to provide) and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

(c.) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(d.) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of the breach of promise.

(e.) A, in November, contracts to buy of B, at a stated price, 100 bales of jute, to be delivered on the 1st of January. On the 15th of December, A gives notice to B that he will not accept the jute. On the 1st of January, the jute is tendered to A, who refuses to accept it. A must pay to B, by way of compensation, the excess, if any, of the contract price over the sum which B could obtain for the jute on the 1st of January.

(f.) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur, for sale at that place, starting on a specified day. The boat, owing to some unavoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course and its market price at the time when it actually arrived.

(g.) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.

(h.) A contracts to let his ship to B for a year, from the 1st of January, for a certain price. Freight rises, and, on the 1st of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the 1st of January.

(i.) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract price of the iron and the sum for which A could have obtained and delivered it.

(j.) A delivers to B, a common carrier, a machine, to be conveyed, without delay, to A's mill, informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained by not obtaining the Government contract.

(k.) A having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and, in consequence, fails to perform his contract with B. C must pay to A 20,000 rupees, being the profit which A would have made by the performance of his contract with B.

(l.) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and, in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and was compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(m.) A, a builder, contracts to erect and finish a house by the 1st of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the 1st of January, it falls down and has to be re-built by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of re-building the house, for the rent lost, and for the compensation made.

(n.) A sells certain merchandise to B warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

(o.) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B, in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(p.) A contracts to deliver 50 maunds of saltpetre to B on the 1st of January, at a certain price. B afterwards, before the 1st of January, contracts to sell the saltpetre to C at a price higher than the market price of the 1st of January. A breaks his promise. In estimating the compensation payable by A to B, the market price of the 1st of January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.

(g.) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill.

(r.) A contracts to sell and deliver to B, on the 1st of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till long after the appointed time, and too late to be used that year in making caps. A is entitled to receive from B, by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(s.) A, a ship-owner, contracts with B to convey him from Calcutta to Sydney in A's ship, sailing on the 1st of January, and B pays to A, by way of deposit, one-half of his passage-money. The ship does not sail on the 1st of January, and B, after being, in consequence, detained in Calcutta for some time, and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. A is liable to repay to B his deposit, with interest, and the expense to which he is put by his detention in Calcutta, and the excess, if any, of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

75. When a contract has been broken, if a sum

is named in the contract as the amount to be paid in case of such breach, the party complaining of the breach is entitled, whether or

not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named.

Explanation.—Where under provisions of any law, any person enters into any bond to perform any condition under a specified penalty, he is liable to pay the full amount of such penalty if he does not perform the condition of the bond.

Illustrations.

(a.) A contracts with B to pay B Rs. 1,000 if he fails to pay B Rs. 500 on a given day. A fails to pay B Rs. 500 on that day. B is entitled to recover from A such compensation not exceeding Rs. 1,000 as the Court considers reasonable.

(b.) A contracts with B that if A practises as a surgeon within Calcutta he will pay B Rs. 5,000. A practises as a surgeon in Calcutta. B is entitled to such compensation not exceeding Rs. 5,000 as the Court considers reasonable.

(c.) A gives a recognizance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

CHAPTER VII.

SALE OF GOODS.

WHEN PROPERTY IN GOODS SOLD PASSES.

76. In this chapter, the word 'goods' means and includes every kind of moveable property.

77. Sale is the exchange of property for a price. It involves the transfer of the ownership of the thing sold from the seller to the buyer.

78. Sale is effected by offer and acceptance of ascertained goods for a price,

or of a price for ascertained goods, together with payment of the price or delivery of the goods, or with tender, part payment, earnest, or part delivery; or with an agreement, express or implied, that the payment, or delivery, or both, shall be postponed.

Where there is a contract for the sale of ascertained goods, the property in the goods sold passes

to the buyer when the whole or part of the price or when the earnest is paid, or when the whole or part of the goods are delivered.

If the parties agree expressly, or by implication, that the payment or delivery, or both, shall be postponed, the property passes as soon as the proposal for sale is accepted.

Illustrations.

(a.) B offers to buy A's horse for 500 rupees. A accepts B's offer, and delivers the horse to B. The horse becomes B's property on delivery.

(b.) A sends goods to B, with the request that he will buy them at a stated price if he approves of them, or return them if he does not approve of them. B retains the goods, and informs A that he approves of them. The goods become B's when B retains them.

(c.) B offers A, for his horse, 1,000 rupees, the horse to be delivered to B on a stated day, and the price to be paid on another stated day. A accepts the offer. The horse becomes B's as soon as the proposal is accepted.

(d.) B offers A, for his horse, 1,000 rupees, on a month's credit. A accepts the offer. The horse becomes B's as soon as the offer is accepted.

(e.) B, on the 1st January, offers to A, for a quantity of rice, 2,000 rupees, to be paid on the 1st March following, the rice not to be taken away till paid for. A accepts the offer. The rice becomes B's as soon as the offer is accepted.

79. Where there is a contract for the sale of a

Effect of agreement for sale of thing to be ascertained, made, or finished. thing which has yet to be ascertained, made, or finished, the ownership of the thing is not transferred to the buyer until it is ascertained, made, or finished.

Illustration.

B orders A, a barge-builder, to make him a barge. The price is not made payable by instalments. While the barge is building, B pays to A money from time to time on account of the price. The ownership of the barge does not pass to B until it is finished.

80. Where, by a contract for the sale of goods,

Sale of goods which the seller is to put into state in which buyer is to take them. the seller is to do anything to them for the purpose of putting them into a state in which the buyer is to take them, the sale is not complete until such thing has been done.

Illustrations.

(a.) A, a ship-builder, contracts to sell to B, for a stated price, a vessel which is lying in A's yard; the vessel to be rigged and fitted for a voyage, and the price to be paid on delivery. Under the contract, the property in the vessel does not pass to B until the vessel has been rigged, fitted up, and delivered.

(b.) A contracts to build a ship for B for a price, payable by instalments, dependent on the progress of the building of the ship, and the ship is to be built under B's superintendence. The ownership of the materials incorporated with the ship passes to B at the time of incorporation, as this was intended by the parties, but the materials lying in A's yard, though suited and intended for the ship, do not pass to B until they are actually incorporated with the ship.

81. Where anything remains to be done to

Sale of goods when seller has to do anything thereto in order to ascertain price. the goods by the seller for the purpose of ascertaining the amount of the price, the sale is not complete until this has been done.

Illustrations.

(a.) A, owner of a stack of bark, contracts to sell it to B, weigh and deliver it, at 100 rupees per ton. B agrees to take and pay for it on a certain day. Part is weighed and delivered to B; the ownership of the residue is not transferred to B until it has been weighed pursuant to the contract.

(b.) A contracts to sell a heap of clay to B at a certain price per ton. B is, by the contract, to load the clay in his own carts, and to weigh each load at a certain weighing machine which his carts must pass over on their way from A's ground to B's place of deposit. Here, nothing more remains to be done by the seller; the sale is complete, and the ownership of the heap of clay is transferred at once.

82. Where the goods are not ascertained at the time of making the contract of sale, it is necessary to the completion of the sale that the goods shall be ascertained.

Illustration.
A agrees to sell to B, 20 tons of oil in A's cisterns. A's cisterns contain more than 20 tons of oil. No portion of the oil has become the property of B.

83. Where the goods are not ascertained at the time of making the agreement for sale, but goods answering the description in the agreement are subsequently appropriated by one party for the purpose of the agreement, and that appropriation is assented to by the other, the goods have been ascertained, and the sale complete.

Illustration.
A, having a quantity of sugar in bulk, more than sufficient to fill 20 hogsheads, contracts to sell B 20 hogsheads of it. After the contract, A fills 20 hogsheads with the sugar, and gives notice to B that the hogsheads are ready, and requires him to take them away. B says he will take them as soon as he can. By this appropriation by A and assent by B, the sugar becomes the property of B.

84. Where the goods are not ascertained at the time of making the contract of sale, and by the terms of the contract, the seller is to do an act with reference to the goods which cannot be done until they are appropriated to the buyer, the seller has a right to select any goods answering to the contract, and by his doing so, the goods are ascertained.

Illustration.
B agrees with A to purchase of him, at a stated price, to be paid on a fixed day, 50 maunds of rice out of a larger quantity in A's granary. It is agreed that B shall send sacks for the rice, and that A shall put the rice into them. B does so, and A puts 50 maunds of rice into the sacks. The goods have been ascertained.

85. Where an agreement is made for the sale of immoveable and moveable property combined, the ownership of the moveable property does not pass before the transfer of the immoveable property.

Illustration.
A agrees with B for the sale of a house and furniture. The ownership of the furniture does not pass to B until the house is conveyed to B.

86. When goods have become the property of the buyer, he must bear any loss arising from their destruction or injury.

Illustrations.
(a.) B offers, and A accepts, 100 rupees for a stack of fire-wood standing on A's premises, the fire-wood to be allowed to remain on A's premises till a certain day, and not to be taken away till paid for. Before payment, and while the fire-wood is on A's premises, it is accidentally destroyed by fire. B must bear the loss.

(b.) A bids 1,000 rupees for a picture at a sale by auction. After the bid, it is injured by an accident. If the accident happens before the hammer falls, the loss falls on the seller; if afterwards, on A.

87. When there is a contract for the sale of goods not yet in existence, the ownership of the goods may be transferred by acts done after the goods are produced, in pursuance of the contract, by the seller, or by the buyer with the seller's assent.

Illustrations.

(a.) A contracts to sell to B, for a stated price, all the indigo which shall be produced at A's factory during the ensuing year. A, when the indigo has been manufactured, gives B an acknowledgment that he holds the indigo at his disposal. The ownership of the indigo vests in B from the date of the acknowledgment.

(b.) A, for a stated price, contracts that B may take and sell any crops that shall be grown on his land in succession to the crops then standing. Under this contract, B, with the assent of A, takes possession of some crops grown in succession to the crops standing at the time of the contract. The ownership of the crops, when taken possession of, vests in B.

(c.) A, for a stated price, contracts that B may take and sell any crops that shall be grown on his land in succession to the crops then standing. Under this contract, B applies to A for possession of some crops grown in succession to the crops which were standing at the time of the contract. A refuses to give possession. The ownership of the crops has not passed to B, though A may commit a breach of contract in refusing to give possession.

88. A contract for the sale of goods to be delivered at a future day is binding, though the goods are not in the possession of the seller at the time of making the contract, and though, at that time, he has no reasonable expectation of acquiring them otherwise than by purchase.

Illustration.

A contracts, on the 1st January, to sell B 50 shares in the East Indian Railway Company, to be delivered and paid for on the 1st March of the same year. A, at the time of making the contract is not in possession of any shares. The contract is valid.

89. Where the price of goods sold is not fixed by the contract of sale, the buyer is bound to pay the seller such a price as the Court considers reasonable.

Illustration.

B, living at Patna, orders of A, a coach-builder at Calcutta, a carriage of a particular description. Nothing is said by either as to the price. The order having been executed, and the price being in dispute between the buyer and the seller, the Court must decide what price it considers reasonable.

DELIVERY.

90. Delivery of goods sold may be made by doing anything which has the effect of putting them in the possession of the buyer, or of any person authorized to hold them on his behalf.

Illustrations.

(a.) A sells to B a horse, and causes or permits it to be removed from A's stables to B's. The removal to B's stable is a delivery.

(b.) B, in England, orders 100 bales of cotton from A, a merchant of Bombay, and sends his own ship to Bombay for the cotton. The putting the cotton on board the ship is a delivery to B.

(c.) A sells to B certain specific goods which are locked up in a godown. A gives B the key of the godown, in order that he may get the goods. This is a delivery.

(d.) A sells to B five specific casks of oil. The oil is in the warehouse of A. B sells the five casks to C. A receives warehouse rent for them from C. This amounts to a delivery of the oil to C, as it shows an assent on the part of A to hold the goods as warehouseman of C.

(e.) A sells to B 50 maunds of rice in the possession of C, a warehouseman. A gives B an order to C to transfer the rice to B, and C assents to such order, and transfers the rice in his books to B. This is a delivery.

(f.) A agrees to sell B five tons of oil, at 1,000 rupees per ton, to be paid for at the time of delivery. A gives to C, a wharfinger, at whose wharf he had twenty tons of the oil, an order to transfer five of them into the name of B. C makes the transfer in his books, and gives A's clerk a notice of the transfer for B. A's clerk takes the transfer notice to B, and offers to give it him on payment of the bill. B refuses to pay. There has been no delivery to B, as B never assented to make C his agent to hold for him the five tons selected by A.

91. A delivery to a wharfinger or carrier of the goods sold, has the same effect as a delivery to the buyer, but does not render the buyer liable for the price of goods which do not reach him, unless the delivery is so made as to enable him to hold the wharfinger or carrier responsible for the safe delivery of the goods.

Illustration.

B, at Agra, orders of A, who lives at Calcutta, three casks of oil to be sent to him by railway. A takes three casks of oil directed to B to the railway station, and leaves them there without conforming to the rules which must be complied with in order to render the Railway Company responsible for their safety. The goods do not reach B. There has not been a sufficient delivery to charge B in a suit for the price.

92. A delivery of part of goods in progress of the delivery of the whole has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

Illustrations.

(a.) A ship arrives in a harbour laden with a cargo consigned to A, the buyer of the cargo. The captain begins to discharge it, and delivers over part of the goods to A in progress of the delivery of the whole. This is a delivery of the cargo to A for the purpose of passing the property in the cargo.

(b.) A sells to B a stack of fire wood, to be paid for by bill on delivery. After the sale, B applies for and obtains from A leave to take away some of the fire-wood. This has not the legal effect of delivery of the whole.

(c.) A sells 50 maunds of rice to B. The rice remains in A's warehouse. After the sale, B sells to C 10 maunds of the rice, and A, at B's desire, sends the 10 maunds to C. This has not the legal effect of a delivery of the whole.

93. In the absence of any special promise to the contrary, the seller of goods is not bound to deliver them until the buyer applies for possession.

94. In the absence of any promise as to delivery, goods sold are to be delivered at the place at which they are at the time of the sale, and goods contracted to be sold are to be delivered at the place at which they are at the time of the contract for sale, or, if not then in existence, at the place at which they are produced.

SELLER'S LIEN.

95. Unless a contrary intention appears by the contract, a seller has a lien on sold goods as long as they remain in his possession, and the price or any part of it remains unpaid.

96. Where, by the contract, the payment is to be made at a future day, but no time is fixed for the delivery of the goods, the seller has no lien, and the buyer is entitled to a present delivery of the goods without payment. But if the buyer becomes insolvent before delivery of the goods, or if the time appointed for payment arrives before the delivery of the goods, the seller may retain the goods for the price.

Explanation.—A person is insolvent who has ceased to pay his debts in the usual course of business, or who is incapable of paying them.

Illustration.

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse. Before the expiry of the three months, B stops payment. A may retain the goods for the price.

97. Where, by the contract the payment is to be made at a future day, and the buyer allows the goods to remain in the possession of the seller until that day, and does not then pay for them, the seller may retain the goods for the price.

Illustration.

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse till the expiry of the three months, and then does not pay for them. A may retain the goods for the price.

98. A seller, in possession of goods sold, may retain them for the price against any subsequent buyer, unless the seller has recognized the title of the subsequent buyer.

STOPPAGE IN TRANSIT.

99. A seller who has parted with the possession of the goods, and has not received the whole price, may, if buyer becomes insolvent, stop the goods while they are in transit to the buyer.

100. Goods are to be deemed in transit while they are in the possession of the carrier, or lodged at any place in the course of transmission to the buyer, and are not yet come into the possession of the buyer, or any person on his behalf, otherwise than as being in possession of the carrier, or as being so lodged.

Illustrations.

(a.) B, living at Madras, orders goods of A, at Patna, and directs that they shall be sent to Madras. The goods are sent to Calcutta, and there delivered to C, a wharfinger, to be forwarded to Madras. The goods, while they are in the possession of C, are in transit.

(b.) B, at Delhi, orders goods of A, at Calcutta. A consigns and forwards the goods to B at Delhi. On arrival there, they are taken to the warehouse of B, and left there. B refuses to receive them, and immediately afterwards stops payment. The goods are in transit.

(c.) B, who lives at Paná, orders goods of A at Bombay. A sends them to Paná by C, a carrier appointed by B. The goods arrive at Paná, and are placed by C, at B's request, in C's warehouse for B. The goods are no longer in transit.

(d.) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. The transit is at an end when the cotton is delivered on board the ship.

(e.) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. A delivers the cotton on board the ship, and takes bills of lading from the master, making the cotton deliverable to A's order or assigns. The cotton arrives at London, but before coming into B's possession, B becomes insolvent. The cotton has not been paid for. A may stop the cotton.

101. The right of stoppage does not, except in the cases hereinafter mentioned, cease on the buyer's reselling the goods while in transit, and receiving the price, but continues until the goods have been delivered to the second buyer, or to some person on his behalf.

102. The right of stoppage ceases if the buyer, having obtained a bill of lading or other document showing title to the goods, assigns it, while the goods are in transit, to a second buyer, who is acting in good faith, and who gives valuable consideration for them.

Illustrations.

(a.) A sells and consigns certain goods to B. A being still unpaid, B becomes insolvent, and while the goods are in transit, assigns the bill of lading for cash to C, who is not aware of his insolvency. A cannot stop the goods in transit.

(b.) A sells and consigns certain goods to B. A being still unpaid, B becomes insolvent, and while the goods are still in transit, assigns the bill of lading for cash to C, who knows that B is insolvent. The assignment not being in good faith, A may still stop the goods in transit.

103. Where a bill of lading or other instrument of title to any goods is assigned by the buyer of such goods by way of pledge, to secure an advance made specifically upon it, in good faith, the seller cannot, except on payment or tender to the pledgee of the advance so made, stop the goods in transit.

Illustrations.

(a.) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for those goods to C, to secure a specific advance of 5,000 rupees made to him upon the bill of lading by C. B becomes insolvent, being indebted to C to the amount of 9,000 rupees. A is not entitled to stop the goods except on payment or tender to C of 5,000 rupees.

(b.) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for those goods to C, to secure the sum of 5,000 rupees due from him to C, upon a general balance of account. B becomes insolvent. A is entitled to stop the goods in transit without payment or tender to C of the 5,000 rupees.

104. The seller may effect stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other depositary in whose possession they are.

105. Such notice may be given either to the person who has the immediate possession of the goods, or to the principal whose servant has possession. In the latter case, the notice must be given at such a time, and under such circumstances, that the principal, by the exercise of reasonable diligence, may

communicate it to his servant in time to prevent a delivery to the buyer.

106. Stoppage in transit entitles the seller to hold the goods stopped until the price of the whole of the goods sold is paid.

Illustration.

A sells to B 100 bales of cotton; 60 bales having come into B's possession, and 40 being still in transit, B becomes insolvent, and A being still unpaid, stops the 40 bales in transit. A is entitled to hold the 40 bales until the price of the 100 bales is paid.

RE-SALE.

107. Where the buyer of goods fails to perform his part of the contract either by not taking the goods sold to him, or by not paying for them, the seller, having a lien on the goods, or having stopped them in transit, may, after giving notice to the buyer of his intention to do so, re-sell them after the lapse of a reasonable time, and the buyer must bear any loss, but is not entitled to any profit which may occur on such re-sale.

TITLE.

108. No seller can give to the buyer of goods a better title to those goods than he has himself, except in the following cases:—

Exception 1. When any person is, by the consent of the owner in possession of any good or in possession of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate or warrant or order for delivery, or other document showing title to the goods, he may transfer the ownership of the goods of which he is so in possession, or to which such documents relate, to any other person, and give such person a good title thereto, notwithstanding any instructions of the owner to the contrary: Provided that the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods or documents has no right to sell the goods.

Exception 2. If one of several joint-owners of goods has the sole possession of them by the permission of the co-owners, the ownership of the goods is transferred to any person who buys them in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods has no right to sell them.

Exception 3. When a person has obtained possession of goods under a contract voidable at the option of the other party thereto, the ownership of the goods is transferred to a third person who, before the contract is rescinded, buys them in good faith of the person in possession, unless the circumstances which render the contract voidable amounted to an offence committed by the seller or the person whom he represents.

In this case the original seller is entitled to compensation from the original purchaser for any loss which the seller may have sustained by being prevented from rescinding the contract.

Illustrations.

(a.) A buys from B, in good faith, a cow which B had stolen from C. The property in the cow is not transferred to A.

(b.) A, a merchant, intrusts B, his agent, with a bill of lading relating to certain goods, and instructs B not to

sell the goods for less than a certain price, and not to give credit to D. B sells the goods to D for less than that price, and gives D three months' credit. The property in the goods passes to D.

(c.) A sells to B goods of which he has the bill of lading, but the bill of lading is made out for delivery of the goods to C, and it has not been endorsed by C. The property is not transferred to B.

(d.) A, B and C are joint Hindú brothers, who own certain cattle in common. A is left by B and C in possession of a cow, which he sells to D. D purchases *bond fide*. The property in the cow is transferred to D.

(e.) A, by a misrepresentation not amounting to cheating, persuades B to sell and deliver to him a horse. A sells the horse to C before B has rescinded the contract. The property in the horse is transferred to C; and B is entitled to compensation from A for any loss which D has sustained by being prevented from getting back the horse.

(f.) A compels B by wrongful intimidation, or induces him by cheating or forgery, to sell him a horse, and, before B rescinds the contract, sells the horse to C. The property is not transferred to C.

WARRANTY.

109. If the buyer, or any person claiming under him, is, by reason of the invalidity of the seller's title, deprived of the thing sold, the seller is responsible to the buyer, or person claiming under him, for loss thereby caused, unless a contrary intention appears by the contract.

110. An implied warranty of goodness or quality may be established by the custom of any particular trade.

111. On the sale of provisions, there is an implied warranty that they are sound.

112. On the sale of goods by sample, there is an implied warranty that the bulk is equal in quality to the sample.

113. Where goods are sold as being of a certain denomination, there is an implied warranty that they are such goods as are commercially known by that denomination, although the buyer may have bought them by sample, or after inspection of the bulk.

Explanation.—But if the contract specifically states that the goods, though sold as of a certain denomination, are not warranted to be of that denomination, there is no implied warranty.

Illustrations.

(a.) A, at Calcutta, sells to B twelve bags of "waste silk," then on its way from Moorshedabad to Calcutta. There is an implied warranty by A that the silk shall be such as is known in the market under the denomination of "waste silk."

(b.) A buys, by sample and after having inspected the bulk, 100 bales of "Fair Bengal" Cotton. The cotton proves not to be such as is known in the market as "Fair Bengal": there is a breach of warranty.

114. Where goods have been ordered for a specified purpose, for which goods of the denomination employed in the order are usually sold, there is an implied warranty by the seller that the goods supplied are fit for that purpose.

Illustration.

B orders of A, a copper manufacturer, copper for sheathing a vessel. A, on this order, supplies copper. There is an implied warranty that the copper is fit for sheathing a vessel.

115. Upon the sale of an article of a well-known kind, there is no implied warranty of its fitness for any particular purpose.

Sale of article of a well-known kind.

Illustration.

B writes to A, the owner of a patent invention for cleaning cotton—"Send me your patent cotton-cleaning machine to clean the cotton at my factory." A sends the machine according to order. There is an implied warranty by A that it is the article known as A's patent cotton-cleaning machine, but none that it is fit for the particular purpose of cleaning the cotton at B's factory.

116. In the absence of fraud and of any express warranty of quality, the seller of an article, which answers the description under which it was sold, is not responsible for a latent defect in it.

Non-responsibility for latent defects.

Illustration.

A sells to B a horse. It turns out that the horse had at the time of the sale a defect of which A was unaware. A is not responsible for this.

117. Where a specific article, sold with a warranty, has been delivered and accepted, and the warranty is broken, the sale is not thereby rendered voidable, but the buyer is entitled to compensation from the seller for loss caused by the breach of warranty.

Buyer's right on breach of warranty.

Illustration.

A sells to B a horse, warranted sound. The horse proves to have been unsound at the time of sale. B is entitled to compensation from A for loss caused by the unsoundness.

118. Where there has been a contract, with a warranty, for the sale of goods, which at the time of the contract were not ascertained, or not in existence, and the warranty is broken, the buyer may accept the goods or refuse to accept the goods when tendered, or keep the goods for a time reasonably sufficient for examining and trying them, and then refuse to accept them, provided that, during such time, he exercises no other act of ownership over them than is necessary for the purpose of examination and trial.

In any case the buyer is entitled to compensation from the seller for any loss caused by the breach of warranty; but if he accepts the goods and intends to claim compensation, he must give notice of his intention to do so within a reasonable time after discovering the breach of the warranty.

Illustrations.

(a.) A agrees to sell and, without application on B's part, deliver to B 200 bales of unascertained cotton by sample. Cotton, not in accordance with sample, is delivered to B. B may return it if he has not kept it longer than a reasonable time for the purpose of examination.

(b.) B agrees to buy of A twenty-five sacks of flour by sample. The flour is delivered to B, who pays the price. B, upon examination, finds it not equal to sample, and informs A that he means to claim compensation. B afterwards uses two sacks, and sells one. He cannot now repudiate the contract and recover the price, but he is entitled to compensation from A for any loss caused by the breach of warranty.

(c.) B makes two pairs of shoes for A by A's order. When the shoes are delivered, they do not fit A. A keeps both pairs for a day. He wears one pair for a short time in the house, and takes a long walk out of doors in the other pair. He may refuse to accept the first pair, but not the second. But he may recover compensation for any loss sustained by the defect of the second pair.

MISCELLANEOUS.

119. When the seller sends goods not ordered with goods ordered, the buyer may refuse to accept any of the goods so sent, if there is risk or trouble in separating the goods ordered from the goods not ordered.

Refusal to accept when goods not ordered are sent.

Illustration.

A orders of B specific articles of china. B sends these articles to A in a hamper with other articles of china which had not been ordered. A may refuse to accept any of the goods sent.

120. If a buyer wrongfully refuses to accept the goods sold to him, this amounts to a breach of the contract of sale.

Effect of wrongful refusal to accept.

121. When goods sold have been delivered to the buyer, the seller is not entitled to rescind the contract on the buyer's failing to pay the price at the time fixed, unless it was stipulated by the contract that he should be so entitled.

Rescission on failure to pay price at time fixed.

122. Where goods are sold by auction, there is a distinct and separate sale of the goods in each lot, by which the ownership thereof is transferred as each lot is knocked down.

Sale of several lots by auction.

123. If, at a sale by auction, the seller makes use of pretended biddings to raise the price, the sale is voidable at the option of the buyer.

Puffers at auction.

CHAPTER VIII.

OF INDEMNITY AND GUARANTEE.

124. A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a contract of indemnity.

'Indemnity' defined.

Illustration.

(a.) A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

125. The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor—

Rights and liabilities of indemnity-holder when sued.

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;

(2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit;

(3) all sums which he may have paid under the terms of any compromise of any such suit if the compromise was not contrary to the orders of the promisor and was one which it would have been prudent for him to make in the absence of any contract of indemnity or if the promisor authorized him to compromise the suit.

126. A contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default. The person who gives the guarantee is called the surety, the person, in respect of whose default the guarantee is given, is called the principal debtor, and the person to whom the guarantee is given is called the creditor. A guarantee may be either oral or written.

Definitions of 'guarantee,' 'surety,' 'principal debtor,' and 'creditor.'

127. Anything done or any promise made for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.

Consideration for guarantee.

Illustrations.

(a.) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.

(b.) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

(c.) A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

128. The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

Surety's liability.

Illustration.

A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable, not only for the amount of the bill, but also for any interest and charges which may have become due on it.

129. A guarantee which extends to a series of transactions, is called a continuing guarantee.

Continuing guarantee.

Illustrations.

(a.) A, in consideration that B will employ C in collecting the rents of B's zamindari, promises B to be responsible, to the amount of 5,000 rupees, for the due collection and payment by C of those rents. This is a continuing guarantee.

(b.) A guarantees B, a tea-dealer, to the amount of £100 for any tea he may from time to time supply to C. B supplies C with tea to above the value of £100, and C pays B for it. Afterwards B supplies C with tea to the value of £200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of £100.

(c.) A guarantees B the price of five sacks of flour to be delivered by B to C payable in one month. B delivers five sacks to C. A pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

130. A continuing guarantee may be at any time revoked, as to future transactions, by the surety, by notice to the creditor.

Revocation of continuing guarantee.

Illustrations.

(a.) A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B for twelve months the due payment of all such bills to the extent of 5,000 rupees. B discounts bills for C to the extent of 2,000 rupees. Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 2,000 rupees, on default of C.

(b.) A guarantees to B, to the extent of 10,000 rupees, that C shall pay all the bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation. C dishonours the bill at maturity. A is liable upon his guarantee.

131. The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

132. Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, but being aware of its existence, the liability of each of the two persons to the third person under the first contract is not affected by the existence of the second contract.

Illustration.

A and B make a joint and several promissory note to C. A makes it, in fact, as surety for B, and C knows this at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.

133. Any variance made without the surety's consent, in the terms of the contract between the principal and the creditor, discharges the surety as to transactions subsequent to the variance.

Illustrations.

(a.) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable to one-fourth of the losses on over drafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

(b.) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of the legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, B misconducts himself. A is discharged from future liability under his guarantee by the change, though the misconduct of B is in respect of a duty not affected by the later Act.

(c.) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duly accounting for monies received by him as such clerk. Afterwards, without A's knowledge or consent, C and B agree that B should be paid by a commission on the goods sold by him and not by a fixed salary. A is not liable for subsequent misconduct of B.

(d.) A gives to C a continuing guarantee to the extent of 3,000 rupees for any oil supplied by C to B on credit. Afterwards B becomes embarrassed, and, without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money, and that the payments shall be applied to the then existing debts between B and C. A is not liable on his guarantee for any goods supplied after this new arrangement.

(e.) C contracts to lend B 5,000 rupees on the first March. A guarantees repayment. C pays the 5,000 rupees to B on the 1st January. A is discharged from his liability as the contract has been varied, inasmuch as C might sue B for the money before the first of March.

134. The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

Illustrations.

(a.) A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B, and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C, and A is discharged from his suretyship.

(b.) A contracts with B to grow a crop of indigo on A's land and to deliver it to B at a fixed rate, and C guarantees A's performance of this contract. B diverts a stream of water which is necessary for the irrigation of A's land, and thereby prevents him from raising the indigo. C is no longer liable on his guarantee.

(c.) A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.

135. A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

136. Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

Illustration.

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.

137. Mere forbearance on the part of the creditor to sue the principal debtor, or to enforce any other remedy against him, does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Illustration.

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

138. Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free that one from any responsibility to the others.

139. If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Illustrations.

(a.) B contracts to build a ship for C for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. A is discharged by this prepayment.

(b.) C lends money to B on the security of a joint and several promissory note made in C's favour by B and by A as surety for B, together with a bill of sale of B's furniture, which gives power to C to sell the furniture, and apply the proceeds in satisfaction of the monies due on the note. Subsequently C sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realized. A is discharged from liability on the note.

(c.) A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see M make up the cash. B omits to see this done as promised and M embezzles. A is not liable to B on his guarantee.

140. Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place,

Rights of surety on payment or performance. the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

141. A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract is entered into, whether

Surety's right to benefit of creditor's securities. the surety knows of the existence of such security or not; and if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

Illustrations.

(a.) C advances to B, his tenant, 2,000 rupees on the guarantee of A. C has also a further security for the 2,000 rupees by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

(b.) C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree, and then, without the knowledge of A, withdraws the execution. A is discharged.

(c.) A, as surety for B, makes a bond jointly with B to C to secure a loan from C to B. Afterwards, C obtains from B a further security for the same debt. Subsequently C gives up the further security. A is not discharged.

142. Any guarantee which has been obtained by means of misrepresentation

Guarantee obtained by misrepresentation. made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

143. Any guarantee which the creditor has obtained by means of keeping silence as to a material circumstance, is invalid.

Guarantee obtained by concealment.

Illustrations.

(a.) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

(b.) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

144. Where a person gives a guarantee upon

Guarantee on agreement that creditor shall not act on it until co-surety joins. a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

145. In every contract of guarantee there is an implied promise by the principal debtor to indemnify

Implied promise to indemnify surety. the surety, and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Illustrations.

(a.) B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suit, having reasonable grounds for doing so, but he is compelled to pay the amount of the debt with costs. He can recover from B the amount paid by him for costs, as well as the principal debt.

(b.) C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A to secure the amount. C, the holder of the bill, demands payment of it from A, and on A's refusal to pay sues A upon the bill. A, not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from B the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

(c.) A guarantees to C, to the extent of 2,000 rupees, payment of rice to be supplied by C to B. C supplies to B payment of rice to a less amount than 2,000 rupees, but obtains from A payment of the sum of 2,000 rupees in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied.

146. Where two or more persons are co-sureties for the same debt or duty

Co-sureties liable to contribute equally. either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable as between themselves to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.

Illustrations.

(a.) A, B and C are sureties to D for the sum of 3,000 rupees lent to E. E makes default in payment. A, B and C are liable as between themselves to pay 1,000 rupees each.

(b.) A, B and C are sureties to D for the sum of 1,000 rupees lent to E, and there is a contract between A, B and C that A is to be responsible to the extent of one-quarter, B to the extent of one-quarter, and C to the extent of one-half. E makes default in payment. As between the sureties, A is liable to pay 250 rupees, B 250 rupees, and C 500 rupees.

147. Co-sureties who are bound in different

Liability of co-sureties bound in different sums. sums are liable to pay equally as far as the limits of their respective obligations permit.

Illustrations.

(a.) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, viz., A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 30,000 rupees. A, B and C are each liable to pay 10,000 rupees.

(b.) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, viz., A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 40,000 rupees. A is liable to pay 10,000 rupees, and B and C 15,000 rupees each.

(c.) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, viz., A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 70,000 rupees. Each has to pay the full penalty of his bond.

CHAPTER IX.

OF BAILMENT.

148. A bailment is the delivery of goods by

'Bailment,' 'bailor,' one person to another for some purpose, upon a contract that they shall when the purpose is accomplished be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering

the goods is called the bailor. The person to whom they are delivered is called the bailee.

Explanation.—If a person, already in possession of the goods of another, contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.

149. The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.

150. The bailor is bound to disclose to the bailee faults in the goods bailed of which the bailor is aware and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Illustrations.

(a.) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

(b.) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

151. In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.

152. The bailee, in the absence of any contract to the contrary, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of them described in section 151.

153. A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.

Illustration.

A lets to B for hire a horse for his own riding. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment.

154. If the bailee makes any use of the goods bailed which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Illustrations.

(a.) A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.

(b.) A hires a horse in Calcutta from B expressly to march to Benares. A rides with due care, but marches to Cuttack instead. The horse accidentally falls and is injured. A is liable to make compensation to B for the injury to the horse.

155. If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

156. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated, the property in the goods remains in the parties respectively, but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.

Illustration.

A bails 100 bales of cotton marked with a particular mark to B. B without A's consent mixes the 100 bales with other bales of his own bearing a different mark: A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of bales and any other incidental damage.

157. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods, and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

Illustration.

A bails a barrel of Cape flour worth Rs. 45 to B. B without A's consent mixes the flour with country flour of his own, worth only Rs. 25 a barrel. B must compensate A for the loss of his flour.

158. Where by the conditions of the bailment the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall re-pay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

159. The lender of a thing for use may at any time require its return if the loan was gratuitous, even though he lent it for a specified time or purpose. But if, on the faith of such loan, the borrower has acted in such a manner that the return of the thing before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

160. It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.

161. If by the fault of the bailee the goods are not returned, delivered, or tendered at the proper time, he is responsible to the bailor for any loss, destruction, or deterioration of the goods from that time.

162. A gratuitous bailment is terminated by Termination of gratuitous bailment by death. the death either of the bailor or of the bailee.

163. In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

Illustration.

A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

164. The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give directions respecting them.

165. If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

166. If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.

If the bailee delivers the goods to a person who is entitled to them as against the bailor, he is not responsible to the bailor for such delivery; but the burden of proving that such person was so entitled to them is upon the bailee.

167. If a third person claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

168. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he has a right to retain the goods against the owner until he receives such compensation; and where the owner has offered a specific reward for the return of goods lost, the finder has a right to sue for such reward and to retain the goods until he receives it.

169. When a thing, which is commonly the subject of sale, is lost, if the owner cannot with reasonable diligence be found, or if he refuses upon demand to pay the lawful charges of the finder, the finder may sell it—

(1.) when the thing is in danger of perishing or of losing the greater part of its value, or,

(2.) when the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value.

170. Where the bailee has, in accordance with the purpose of the bailment, rendered any service, involving the exercise of labour or skill, on the goods bailed, he has, in the absence of a contract to

the contrary, a right to retain the goods until he receives remuneration for the services he has rendered in respect of them.

Illustrations.

(a.) A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.

(b.) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give A three months' credit for the price. B is not entitled to retain the coat until he is paid.

171. Bankers, factors, wharfingers, attorneys of a High Court and policy brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.

BAILMENTS OF PLEDGES.

172. The bailment of goods as security for payment of a debt or performance of a promise is called pledge. The bailor is in this case called the pawnor. The bailee is called the pawnee.

173. The pawnee may retain the goods pledged not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

174. The pawnee shall not retain the goods pledged for any other debt or promise than the debt or promise for which they are pledged, except by contract between the parties; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

175. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

176. If the pawnor makes default in payment of the debt or performance of the promise in respect of which the goods were pledged, at the stipulated time, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security, or may sell the thing pledged on giving the pawnor reasonable notice of the sale.

If the proceeds of the sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

177. If a time is stipulated for the payment of the debt or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any time before the actual sale of them, but he must, in that case pay, in addition, any expenses which have arisen from his default.

178. A person who is in possession of goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, warrant or order for delivery, or any other document of title to goods, may make a valid pledge of such goods, or documents: Provided that the pawnee acts in good faith and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly:

Provided also that such goods or documents have not been obtained from their lawful owner or from any person in lawful custody of them by means of an offence or fraud.

179. Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

SUITS BY BAILEES OR BAILORS AGAINST WRONGDOERS.

180. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made, and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

181. Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

CHAPTER X.

AGENCY.

APPOINTMENT AND AUTHORITY OF AGENTS.

182. An agent is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the principal.

183. Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.

184. As between the principal and third persons, any person may become an agent; but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

185. No consideration is necessary to create an agency.

186. The authority of an agent may be express or implied.

187. An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing may be accounted circumstances of the case.

Illustration.

A owns a shop in Serampore, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A, to order goods from C in the name of A for the purposes of the shop.

188. An agent having an authority to do any act, has authority to do every lawful thing which is necessary in order to do such act.

An agent having an authority to carry on any business, has authority to do every lawful thing necessary for the purpose of or usually done in the course of conducting such business.

Illustrations.

(a.) A is employed by B, residing in London, to recover at Bombay a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(b.) A constitutes B his agent to carry on his business of a ship-builder. B may purchase timber and other materials, and hire workmen for the purpose of carrying on the business.

189. An agent has authority in an emergency to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence in his own case under similar circumstances.

Illustrations.

(a.) Agent for sale may have goods repaired.

(b.) A consigns provisions to B at Calcutta, with directions to send them immediately to C at Cuttack. B may sell the provisions at Calcutta if they will not bear the journey without spoiling.

SUB-AGENTS.

190. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must be employed.

191. A sub-agent is a person employed by and acting under the control of the original agent in the business of the agency.

192. Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal. The agent is responsible to the principal for the acts of the sub-agent. The sub-agent is responsible for his acts to the agent but not to the principal, except in cases of fraud or wilful wrong.

193. Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons, and the principal is not represented by or responsible for the acts of the person so employed, nor is that person responsible to the principal.

194. Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Relation between principal and person to whom agency is duly delegated.

implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Illustrations.

(a.) A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

(b.) A authorizes B, a merchant in Calcutta to recover the monies due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co. for the recovery of the money. D is not a sub-agent, but is solicitor for A.

195. In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary

Agent's duty in naming such person.

prudence would exercise in his own case, and if he does this he will not be responsible to the principal for the acts or negligence of the agent so selected.

Illustrations.

(a.) A instructs B, a merchant, to buy a ship for him. B employs a ship-surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A.

(b.) A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

RATIFICATION.

196. Where acts are done by one person on behalf of another, but without his knowledge, or authority, he may elect to ratify or

Effect of ratification.

to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority.

197. Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

Ratification may be expressed or implied.

Illustrations.

(a.) A, without authority, buys goods for B. Afterwards B sells them to C on his own account; B's conduct implies a ratification of the purchase made for him by A.

(b.) A, without B's authority, lends B's money to C. Afterwards B accepts interest on the money from C. B's conduct implies a ratification of the loan.

198. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Knowledge requisite to valid ratification.

199. A person, ratifying any unauthorized act done on his behalf, ratifies the whole of the transaction of which such act formed a part.

Effect of ratifying unauthorized act forming part of a transaction.

200. An act done by one person on behalf of another without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to

Ratification of unauthorized act cannot injure third person.

damages or of terminating any right or interest of a third person, cannot by ratification be made to have such effect.

Illustrations.

(a.) A, an unauthorized person, requires on account of B, the owner of a chattel, the delivery of the chattel to B. This demand cannot be ratified by B, so as to make the holder liable for damages for default.

(b.) A holds a lease from B, terminable on three months' notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B so as to be binding on A.

REVOCATION OF AUTHORITY.

201. An agency is terminated by the principal revoking his authority or by the agent renouncing the business of the agency, or by the business of the agency being completed, or by either the principal or agent dying or becoming of unsound mind: or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

Termination of agency.

202. Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Where agency is coupled with an interest, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Illustrations.

(a.) A gives authority to B to sell A's land, and to pay himself out of the proceeds the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

(b.) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay out of the price the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.

203. The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

Revocation of agent's authority.

204. The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency.

Revocation where authority has been partly exercised.

Illustrations.

(a.) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's monies remaining in his hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(b.) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's monies remaining in B's hands. B buys 1,000 bales of cotton in A's name, and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

205. Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

Compensation for revocation or renunciation.

206. Reasonable notice must be given of such revocation or renunciation, or the damage thereby resulting to the principal or the agent, as the case may be, must be made good to him by the other.

Notice of revocation or renunciation.

207. Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

Revocation and renunciation may be expressed or implied.

Illustration.

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

208. The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

When termination of agent's authority takes effect.

Illustrations.

(a.) A directs B to sell goods for him, and agrees to give B five per cent. commission on the price fetched by the goods. A afterwards by letter revokes his authority. B, after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A, and B is entitled to five rupees as his commission.

(b.) A, at Madras, by letter directs B to sell some cotton lying in a warehouse in Bombay for him, and afterwards by letter revokes his authority to sell, and directs B to send the cotton to Madras. B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

(c.) A directs B, his agent, to pay certain money to C. A dies and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.

209. When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take all reasonable steps for the protection and preservation of the interests entrusted to him on behalf of the representatives of his late principal.

Agent's duty on termination of agency by principal's death or insanity.

210. The termination of the authority of an agent causes the termination of the authority of all sub-agents appointed by him, subject to the rules herein contained regarding the termination of an agent's authority.

Termination of sub-agent's authority.

AGENT'S DUTY TO PRINCIPAL.

211. An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and if any profit accrues he must account for it.

Agent's duty in conducting principal's business.

Illustrations.

(a.) A, an agent engaged in carrying on for B a business in which it is the custom to invest from time to time at interest the monies which may be in hand, omits to make such investment. A must make good to the principal the interest usually obtained by such investments.

(b.) B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

212. An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill, or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill, or misconduct.

Skill and diligence required from agent.

Illustrations.

(a.) A, a merchant in Calcutta, has an agent B in London, to whom a large sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss as, e. g., by variation of rate of exchange, but not further.

(b.) A, an agent for the sale of goods, having authority to sell on credit, sells to B, on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

(c.) A, an insurance broker employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B.

(d.) A, a merchant in England, directs B, his agent at Bombay, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

213. An agent is bound to render proper accounts to his principal on demand.

Agent's accounts.

214. It is the duty of an agent in cases of difficulty to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

Agent's duty to communicate with principal.

215. If an agent deals on his own account in the business of the agency without first obtaining the consent of the principal, and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction if the case show either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Agent dealing on his own account in business of agency without principal's consent.

Illustrations.

(a.) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale if he can show that B has dishonestly concealed any material fact or that the sale has been disadvantageous to him.

(b.) A directs B to sell A's estate. B on looking at the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine.

A allows B to buy, in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

- 216.** If an agent without the knowledge of his principal deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Illustration.

A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

- 217.** An agent may retain, out of any sums received on account of the principal in the business of the agency, all monies due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

218. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

- 219.** In the absence of any contract to the contrary, payment for the performance of any act is not due to the agent until the completion of such act; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

- 220.** An agent who is guilty of misconduct in the business of the agency, is not entitled to any remuneration in respect of that part of the business which has been so misconducted.

Illustrations.

(a.) A employs B to recover 1,00,000 rupees from C and lay it out on good security. B recovers the 1,00,000 rupees and lays out 90,000 rupees on good security, but lays out 10,000 rupees on security, which he ought to have known to be bad, whereby A loses 2,000 rupees. B is entitled to remuneration for recovering the 1,00,000 rupees and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2,000 rupees to B.

(b.) A employs B to recover 1,000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

- 221.** In the absence of any contract to the contrary, an agent is entitled to retain goods, papers, and other property, whether moveable or immoveable, of the principal received by him, until the amount due to himself for commission, disbursements, and services in respect of the same has been paid or accounted for to him.

PRINCIPAL'S DUTY TO AGENT.

- 222.** The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by him in exercise of the authority conferred upon him.

Illustrations.

(a.) B, at Singapore, under instructions from A of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit, and A authorizes him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs, and expenses.

(b.) B, a broker at Calcutta, by the orders of A, a merchant there, contracts with C for the purchase of 10 casks of oil for A. Afterwards A refuses to receive the oil, and C sues B. B informs A, who repudiates the contract altogether. B defends, but unsuccessfully, and has to pay damages and costs and incurs expenses. A is liable to B for such damages, costs, and expenses.

- 223.** Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it cause an injury to the rights of third persons.

Illustrations.

(a.) A, a decree-holder and entitled to execution of B's goods, requires the officer of the Court to seize certain goods representing them to be the goods of B. The officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum he is compelled to pay to C, in consequence of obeying A's directions.

(b.) B, at request of A sells goods in the possession of A, but which A had no right to dispose of. B does not know this, and hands over the proceeds of the sale to A. Afterwards C, the true owner of the goods, sues B and recovers the value of the goods and costs. A is liable to indemnify B for what he has been compelled to pay to C, and for B's own expenses.

- 224.** Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.

Illustrations.

(a.) A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.

(b.) B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication, and all costs and damages of any action in respect thereof. B is sued by C and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.

- 225.** The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill.

Illustration.

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskillfully put up, and B is in consequence hurt. A must make a compensation to B.

EFFECT OF AGENCY ON CONTRACTS WITH THIRD PERSONS.

- 226.** Contracts entered into through an agent and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences as if the contracts had been entered into and the acts done by the principal in person.

Illustrations.

(a.) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the principal, set-off against that claim a debt due to himself from B.

(b.) A being B's agent with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

227. When an agent does more than he is authorized to do, and when the part of what he does which is within his authority can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

Principal how far bound when agent exceeds authority.

Illustration.

A, being owner of a ship and cargo, authorizes B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

228. Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

When excess of agent's authority is not separable.

Illustration.

A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction.

229. Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

Consequences of notice given to agent.

Illustrations.

(a.) A is employed by B to buy from C certain goods of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set-off a debt owing to him from C against the price of the goods.

(b.) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set-off against the price of the goods a debt owing to him from C.

Agent cannot personally enforce nor be bound by contracts on behalf of principal.

Implication of contract to contrary.

230. In the absence of any contract to the contrary, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Such a contract shall be presumed to exist in the following cases:—

- (1.) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad.
- (2.) Where the agent does not disclose the name of his principal.
- (3.) Where the principal, though disclosed, cannot be sued.

231. If an agent makes a contract with a person who neither knows, nor

Rights of parties to a contract made by agent not disclosed.

has reason to suspect, that he is an agent, his principal may require the performance

of the contract, but the other contracting party has the same rights as against the principal as he would have had as against the agent if the agent had been principal.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

232. Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the engagement, can only obtain it, subject to the rights and obligations subsisting between the agent and the other party to the contract.

Performance of contract with agent supposed to be principal.

Illustration.

A, who owes 500 rupees to B, sells 1,000 rupees' worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set-off A's debt.

233. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

Principal's liability where agent personally liable.

Illustration.

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

234. When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable.

235. A person untruly representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his supposed employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

Liability of pretended agent.

236. A person, with whom a contract has been entered into in the character of agent, is not entitled to require the performance of it, if he was in reality acting not as agent but on his own account.

Person falsely contracting as agent, not entitled to performance.

237. When an agent has without authority done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he had by his words or conduct induced such persons to believe that such acts and obligations were within the scope of the agent's authority.

Liability of principal inducing belief that agent's unauthorized acts were authorized.

Illustrations.

(a.) A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

(b.) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.

238. Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if they had been made or committed by the principals; but misrepresentations made, and frauds committed, by agents, in matters, which do not fall within their authority, do not affect their principals.

Effect on agreement of misrepresentation or fraud by agent.

the course of their business for their principals, have the same effect on agreements

made by such agents as if they had been made or committed by the principals; but misrepresentations made, and frauds committed, by agents, in matters, which do not fall within their authority, do not affect their principals.

Illustrations.

(a.) A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation which he was not authorized to make by B. The contract is voidable as between B and C at the option of C.

(b.) A, the Captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor.

CHAPTER IX.**OF PARTNERSHIP.**

239. Partnership is the relation which subsists between persons who have agreed to combine their property, labour, or skill in some business, and to share the profits thereof between them.

Persons who have entered into partnership with one another are called collectively a firm.

'Firm' defined.

Illustrations.

(a.) A and B buy 100 bales of cotton, which they agree to sell for their joint account; A and B are partners in respect of such cotton.

(b.) A and B buy 100 bales of cotton, agreeing to share it between them. A and B are not partners.

(c.) A agrees with B, a goldsmith, to buy and furnish gold to B to be worked up by him and sold, and that they shall share in the resulting profit or loss. A and B are partners.

(d.) A and B agree to work together as carpenters, but that A shall receive all profits, and shall pay wages to B. A and B are not partners.

(e.) A and B are joint owners of a ship. This circumstance does not make them partners.

240. A loan to a person engaged or about to engage in any trade or undertaking upon a contract with such person that the lender shall receive interest at a rate varying with the profits, or that he shall receive a share of the profits, does not, of itself, constitute the lender a partner or render him responsible as such.

241. In the absence of any contract to the contrary, property left by a retiring partner or the representative of a deceased partner to be used in the business, is to be considered a loan within the meaning of the last preceding section.

Property left in business by retiring partner or deceased partner's representative.

contrary, property left by a retiring partner or the representative of a deceased partner to be used in the business, is to be considered a loan within the meaning of the last preceding section.

242. No contract for the remuneration of a servant or agent of any person engaged in any trade or undertaking by a share of the profits of such trade or undertaking shall, of itself, render such servant or agent responsible as a partner therein nor give him the rights of a partner.

Contract for servant's remuneration by share of profits.

servant or agent of any person engaged in any trade or undertaking by a share of the profits of such trade or

undertaking shall, of itself, render such servant or agent responsible as a partner therein nor give him the rights of a partner.

243. No person being a widow or child of a deceased partner of a trader, and receiving by way of annuity a proportion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of such trader, or be subject to any liabilities incurred by him.

Annuity out of profits to widow or child of deceased partner.

deceased partner of a trader, and receiving by way of annuity a proportion of the profits made by such trader in his

business, shall, by reason only of such receipt, be deemed to be a partner of such trader, or be subject to any liabilities incurred by him.

244. No person receiving by way of annuity or otherwise a portion of the profits of any business, in consideration of the sale by him of the good-will of such business, shall, by reason only of such receipt, be deemed to be a partner of the person carrying on such business, or be subject to his liabilities.

Portion of profits received for sale of good-will.

or otherwise a portion of the profits of any business, in consideration of the sale by him of the good-will of such

business, shall, by reason only of such receipt, be deemed to be a partner of the person carrying on such business, or be subject to his liabilities.

245. A person who has, by words spoken or written, or by his conduct, led another to believe that he is a partner in a particular firm is responsible to him as a partner in such firm.

Responsibility of person leading another to believe him a partner.

written, or by his conduct, led another to believe that he is a partner in a particular

firm is responsible to him as a partner in such firm.

246. Any one consenting to allow himself to be represented as a partner is liable as such to third persons who, on the faith thereof, give credit to the partnership.

Liability of person permitting himself to be represented as a partner.

Any one consenting to allow himself to be represented as a partner is liable as such to third persons who, on the faith thereof,

give credit to the partnership.

247. A person who is under the age of majority, according to the laws to which he is subject, may be admitted to the benefits of partnership, but cannot be made personally liable for any obligation of the firm; but the share of such minor in the property of the firm is liable for the obligations of the firm.

Minor partner.

age of majority, according to the laws to which he is subject, may be

admitted to the benefits of partnership, but cannot be made personally liable for any obligation of the firm; but the share of such minor in the property of the firm is liable for the obligations of the firm.

248. A person who has been admitted to the benefits of partnership under the age of majority, becomes, on attaining that age, liable for all obligations incurred by the partnership since he was so admitted, unless he gives public notice within a reasonable time of his repudiation of the partnership.

Liability of minor partner on attaining majority.

benefits of partnership under the age of majority, becomes, on attaining that age, liable for all obligations incurred by

the partnership since he was so admitted, unless he gives public notice within a reasonable time of his repudiation of the partnership.

249. Every partner is liable for all debts and obligations incurred in the usual course of business by or on behalf of the partnership while he is a partner; but a person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of such firm for any thing done before he became a partner.

Partner's liability for debts of partnership.

Every partner is liable for all debts and obligations incurred in the usual course of business by or on behalf of the partnership

while he is a partner; but a person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of such firm for any thing done before he became a partner.

250. Every partner is liable to make compensation to third persons in respect of loss or damage arising from the neglect or fraud of any partner in the management of the business of the firm.

Partner's liability to third person for neglect or fraud of co-partner.

Every partner is liable to make compensation to third persons in respect of loss or damage arising from the neglect or fraud of any partner in the

management of the business of the firm.

251. Each partner who does any act necessary for or usually done in carrying on the business of such a partnership as that of which he is a member, binds his co-partners to the same

Partner's power to bind co-partners.

Each partner who does any act necessary for or usually done in carrying on the business of such a partnership as that of which

he is a member, binds his co-partners to the same

extent as if he were their agent duly appointed for that purpose.

Exception.—If it has been agreed between the partners that any restriction shall be placed upon the power of any one of them, no act done in contravention of such agreement shall bind the firm with respect to persons having notice of such agreement.

Illustrations.

(a.) A, and B trade in partnership—A residing in England and B in India. A draws a bill to exchange in the name of the firm. B has no notice of the bill, nor is he at all interested in the transaction. The firm is liable on the bill, provided the holder did not know of the fraud.

(b.) A, being one of a firm of solicitors and attorneys draws a bill of exchange in the name of the firm without authority. The other partners are not liable on the bill.

(c.) A and B carry on business in partnership as bankers. A sum of money is received by A on behalf of the firm. A does not inform B of such payment, and afterwards A appropriates the money to his own use. The partnership is liable to make good the money.

(d.) A and B are partners. A, with the intention of cheating B, goes to a shop and purchases articles on behalf of the firm such as might be used in the ordinary course of the partnership business, and converts them to his own separate use, there being no collusion between him and the seller. The firm is liable for the price of the goods.

252. Where partners have by contract regu-

lated and defined as between themselves their rights and obligations; such contract can be annulled or altered only by consent of all of them, which consent must either be expressed or be implied from a uniform course of dealing.

Illustration.

A, B and C intending to enter into partnership, execute written articles of agreement, by which it is stipulated that the net profits arising from the partnership business shall be equally divided between them. Afterwards they carry on the partnership business for many years, A, receiving one-half of the net profits, and the other half being divided equally between B and C. All parties know of and acquiesce in this arrangement. This course of dealing supersedes the provision in the articles as to the division of profits.

253. In the absence of any contract to the

contrary, the relations of the partners to each other are determined by the following rules:—

- (1.) All partners are joint owners of all property originally brought into the partnership stock, or bought with money belonging to the partnership, or acquired for purposes of the partnership business. All such property is called partnership property. The share of each partner in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss.
- (2.) All partners are entitled to share equally in the profits of the partnership business, and must contribute equally towards the losses sustained by the partnership.
- (3.) Each partner has a right to take part in the management of the partnership business.
- (4.) Each partner is bound to attend diligently to the business of the partnership, and is not entitled to any remuneration for acting in such business.

(5.) When differences arise as to ordinary matters connected with the partnership business, the decision shall be according to the majority of the partners; but no change in the nature of the business of the partnership can be made, except with the consent of all the partners.

(6.) No person can introduce a new partner into a firm without the consent of all the partners.

(7.) If from any cause whatsoever, any member of a partnership ceases to be so, the partnership is dissolved as between all the other members.

(8.) Unless the partnership has been entered into for a fixed term, any partner may retire from it at any time.

(9.) Where a partnership has been entered into for a fixed term, no partner can during such term retire, except with the consent of all the partners, nor can he be expelled by his partners for any cause whatever, except by order of Court.

(10.) Partnerships, whether entered into for a fixed term or not, are dissolved by the death of any partner.

254. At the suit of a partner the Court may dissolve the partnership in the following cases:—

- (1.) When a partner becomes of unsound mind.
- (2.) When a partner other than the person suing has been adjudicated an insolvent under any law relating to insolvent debtors.
- (3.) When a partner other than the person suing has done any act by which the whole interest of such partner is legally transferred to a third person.
- (4.) When any partner becomes incapable of performing his part of the partnership contract.
- (5.) When a partner other than the person suing is guilty of gross misconduct in the affairs of the partnership or towards his partners.
- (6.) When the business can only be carried on at a loss.

Dissolution of partnership by prohibition of business.

255. A partnership is in all cases dissolved by its business being prohibited by law.

256. If a partnership entered into for a fixed term be continued after such term has expired, the rights and obligations of the partners will, in the absence of any agreement to the contrary, remain the same as they were at the expiration of the term, so far as such rights and obligations can be applied to a partnership dissolvable at the will of any partner.

257. Partners are bound to carry on the business of the partnership for the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

General duties of partners.

Application of original terms to partnership continued under them.

258. A partner must account to the firm for any benefit derived from a transaction affecting the partnership.

Benefit derived from transaction affecting partnership.

Illustrations.

(a.) A, B and C are partners in trade. C, without the knowledge of A and B, obtains for his own sole benefit a lease of the house in which the partnership business is carried on. A and B are entitled to participate, if they please, in the benefit of the lease.

(b.) A, B and C carry on business together in partnership as merchants, trading between Bombay and London. D, a merchant in London, to whom they make their consignments, secretly allows C a share of the commission which he receives upon such consignments, in consideration of C's using his influence to obtain the consignments for him. C is liable to account to the firm for the money so received by him.

259. If a partner, without the knowledge and consent of the other partners, carries on any business competing or interfering with that of the firm, he must account to the firm for all profits made in such business, and must make compensation to the firm for any loss occasioned thereby.

260. Every person introduced as a partner into a pre-existing firm, is subject to all the obligations incurred by the firm before he was introduced.

261. A continuing guarantee, given either to a firm or to a third person, in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm, to which, or in respect of the transactions of which, such guarantee was given.

262. The estate of a partner who has died is not liable in respect of any obligation incurred by the firm after his death in the absence of agreement to the contrary.

263. Where there are joint debts due from the partnership, and also separate debts due from any partner, the partnership property must be applied in the first instance in payment of the debts of the firm, and if there is any surplus, then the share of each partner must be paid to him or applied in payment of his separate debts. The separate property of any partner must be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

264. After a dissolution of partnership, the rights and obligations of the partners continue in all things necessary for winding-up the business of the partnership.

265. Persons dealing with a firm will not be affected by a dissolution of which no public notice has been given, unless they had themselves notice of such dissolution.

266. In the absence of any contract to the contrary, after the termination of a partnership, each partner or his representatives may apply to the Court to wind up the business of the firm, to provide for the payment of its debts, and to distribute the surplus according to the shares of the partners respectively.

Explanation.—The Court in this section means a Court not inferior to the Court of a District Judge within the local limits of whose jurisdiction the place or principal place of business of the firm is situated.

267. Extraordinary partnerships, such as partnerships with limited liability, incorporated partnerships, and joint-stock companies, shall be regulated by the law now in force in India relating thereto, until further provision shall be made in that behalf.

SCHEDULE.

ENACTMENTS REPEALED.

Statutes.

No. and year of Statute Act.	TITLE.	Extent of repeal.
Stat. 29 Car. 2, cap. 3.	An Act for prevention of Frauds and Perjuries.	Sections 1, 2, 3, 4 and 17.
Stat. 11 & 12 Vic., cap. 21.	To consolidate and amend the law relating to insolvent debtors in India.	Section 42.

No. and year of Act.	TITLE.	Extent of repeal.
Act XIII of 1840.	An Act for the amendment of the law regarding factors by extending to the territories of the East India Company, in cases governed by the English law, the provisions of the Stat. 4 Geo. iv, c. 83, as altered and amended by the Stat. 6 Geo. iv, c. 94.	The whole.
Act XIV of 1840.	An Act for rendering a written memorandum necessary to the validity of certain promises and engagements by extending to the territories of the East India Company, in cases governed by English law, the provisions of Stat. 9 Geo. iv, cap. 14.	The whole, except section 4.
Act XXI of 1848.	An Act for avoiding Wagers...	
Act V of 1866.	An Act to provide a summary procedure on bills of exchange, and to amend in certain respects the commercial law of British India.	Section 10.
Act XV of 1866.	An Act to amend the law of Partnership in India.	The whole.

BOMBAY ACT.

No. and year of Act.	TITLE.	Extent of repeal.
Act III of 1865.	An Act to amend Act XXI of 1848 (for avoiding wagers).	The whole.

H. S. CUNNINGHAM,

Offg. Secy. to the Council of the
Govr. Genl. for making Laws
and Regulations.

[Second Publication.]

The following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 12th March 1872:—

We, the undersigned, the Members of the Select

From Chief Secretary to Government, Fort Saint George, No. 282, dated 27th February 1866, and enclosures.

From Acting Secretary to Government, Bombay, No. 3263, dated 15th October 1866, and enclosures.

From Secretary to Government, North-Western Provinces, No. 884A, dated 4th December 1865.

From Secretary to Government, Panjáb, No. 80, dated 26th January 1866.

From Secretary to Government, Home Department, to Secretary to Government of Bengal, No. 199, dated 10th January 1867.

Endorsement, Home Department, No. 156J, dated 30th January 1872, forwarding letter from Secretary to Government of Bengal, No. 357, dated 17th January 1872, and enclosures.

From Solicitor to Government (Bengal), No. 104, dated 29th January 1872, forwarding opinion of the Advocate General, dated 27th January 1872.

Office Memo., Home Department, No. 231J, dated 3rd February 1872, forwarding letter from Junior Secretary to Government, Bengal, No. 434, dated 20th January 1872, and letter from Officiating Secretary to Chief Commissioner, Oudh, No. 333, dated 20th January 1872, and enclosures.

Endorsement, Home Department, No. 226J, dated 3rd February 1872, forwarding letter from Secretary to Chief Commissioner, British Burma, No. 161-429, dated 9th October 1871, and enclosures.

Telegram from Registrar, High Court, Bombay, dated 6th February 1872.

" " " " Madras, dated 6th " "

" " " " Chief Court, Panjáb, dated 6th " "

Office Memo., Financial Department, No. 1030, dated 8th February 1872, forwarding Office Memo., Home Department, No. 113, dated 23rd January 1872, and enclosures.

Petition from certain Members of the Bombay Association, dated 5th February 1872.

Endorsement, Home Department, No. 113P, dated 9th February 1872, forwarding Office Memo., Foreign Department, No. 13J, dated 24th January 1872, and enclosures.

From Registrar, High Court, Calcutta, No. 122, dated 10th February 1872.

From Private Secretary to His Honour the Lieutenant Governor of Bengal, dated 1st March 1872.

Petition from British Indian Association, dated 29th February 1872.

From Secretary to Government, Madras, No. 25, dated 19th February 1872, and enclosures.

From Assistant Registrar, High Court, Bombay, No. 276, dated 28th February 1872, and enclosures.

Endorsement, Home Department, No. 428, dated 7th March 1872, forwarding letter from Officiating 1st Assistant Resident, Haidarábád, No. 11, dated 12th February 1872.

Letter from Secretary to Chief Commissioner, Central Provinces, No. 42P, dated 15th February 1872, and enclosures.

From Secretary to Government, Bombay, No. 970, dated 29th February 1872, forwarding Minute by Mr. Justice Gibbs, dated 20th April 1866.

Notes by Robert Hill Pinhey, Esq., dated 16th September 1871.

Note by R. West, Esq.

Correspondence of Judicial Officers of Bombay, with notes, memoranda, &c.

From Secretary to Government, Bombay, No. 1016, dated 4th March 1872, and enclosure.

Endorsement, Home Department, No. 464, dated 9th March 1872, forwarding letter from Officiating Secretary to Government, Bengal, No. 992, dated 9th February 1872, and enclosures.

Endorsement, Home Department, No. 481J, dated 12th March 1872, forwarding letter from Officiating Secretary to Government, North-Western Provinces, No. 307A, dated 27th February 1872, and enclosures.

Endorsement, Home Department, No. 480J, dated 12th March 1872, forwarding letter from Officiating Secretary to Government, Panjáb and its Dependencies, No. 426, dated 12th February 1872, and enclosures.

Office Memo., Foreign Department, No. 519 G, dated 13th March 1872.

Endorsement, Home Department, No. 545 J, dated 18th March 1872, forwarding letter from Commissioner of the Dacca Division, No. 138T, dated 8th February 1872, and enclosures.

Memo. by His Honour the Lieutenant Governor of Bengal, dated 19th March 1872.

Notes by His Honour the Lieutenant-Governor of Bengal and by the Hon'ble F. S. Chapman, dated 21st March 1872.

4. We maintain the proposal referred to in the preliminary report, Resolution 1, clause 4, that any European British subject may apply to a High Court for an order to bring the applicant before it and to examine the legality of his imprisonment; and we have empowered the High Court to make the necessary inquiries, by affidavit or otherwise, either before or after the issue of such an order, with a view to ascertaining the state of the case.

Committee of the Council of the Governor General of India for the purpose of making Laws and Regulations to which the Bill for regulating the procedure of the Courts of Criminal Judicature not established by Royal Charter was referred have, in addition to the papers enumerated in our preliminary report of the 30th January last, considered the papers marginally noted, and beg to make the following recommendations:—

2. With regard to European British subjects, we have, except in one particular, maintained the arrangements proposed in the first resolution of our preliminary report. We recommend (a) that a Magistrate of the first class, who is a European British subject and a Justice of the Peace, shall have power to try European British subjects for offences of the class usually tried by Magistrates, and, on conviction, to pass any sentence warranted by law, not exceeding three months' imprisonment and one thousand rupees fine.

(b.) That a Sessions Judge, who is a European British subject, may try European British subjects for offences which are not punishable with death or transportation for life, and which can, in his opinion, be adequately punished with a sentence of one year's imprisonment and fine. In case the Sessions Judge considers that such punishments are inadequate, he will transfer the case for disposal to the High Court.

3. In trials of European British subjects before a Sessions Court, the Judge will follow his ordinary procedure, and the trial will be either with assessors or by jury. Not less than half the assessors or jurors, as the case may be, are to be European British subjects. To obtain this number we have allowed the Judge to summon persons who could, in other trials, claim exemption.

5. We consider such an order preferable to the common law writ of *Habeas Corpus* on account of the intricacies of procedure connected with the issue of and returns to that writ.

6. We propose, accordingly, that no writs of *Habeas Corpus* or *Mainprise* shall be issued beyond the Presidency towns. Whether, as the law now stands, they can be issued, may be regarded as a moot point; but we think the existence of such a power would be unsuited to this country. The provisions of the Penal Code on "Wrongful Restraint" appear to us to be quite sufficient protection for personal liberty in all common cases.

7. We have cleared up the doubt which has hitherto existed as to whether all portions of the Code apply to European British subjects, by providing that, except in respect of the special privileges above described, and in respect of orders under chapter thirty-seven to give security in cases of bad livelihood, the Criminal Procedure Code shall be applicable to all persons alike.

8. With regard to the second Resolution of the preliminary report, we have, after communication with the several High Courts, come to the conclusion that it would not be convenient to deal in this Bill with the procedure of Police Magistrates in Presidency towns, and of High Courts in the exercise of their original criminal jurisdiction within the like limits. The subject is, however, one which, in our opinion, calls for early legislation; and we recommend that a Bill which has been prepared in the Legislative Department, dealing with these matters, should be taken into consideration at the first convenient opportunity.

9. As to Resolution 3, we do not recommend the abolition of the jury system; but we think that the opinion of a majority of the jurors with the concurrence of the Judge should decide the case; and that, if a Judge differs from the verdict of the majority of the jury, he should have power to refer the case to the High Court, which may pass such order thereon as it thinks fit.

10. To come to the details of the Bill as now amended, several additions have been made to the chapter of definitions. We have assigned a precise meaning to "Investigation," "Inquiry," "Trial," "Judicial proceeding," "Province," "High Court," "European British subject," "Sessions case," "Magistrate's case," "Summons Case" and "Warrant case," "Cognizable," "non-cognizable," &c. The effect of these definitions will be, we think, to render the provisions of the Code more distinct and intelligible.

11. We have provided that the criminal Courts shall have jurisdiction in offences created by special and local laws which are silent as to the tribunal intended, but no Court is to take cognizance of offences punishable with more than twice the maximum punishment which it can inflict, nor is it to inflict a punishment in excess of its powers.

12. In Part II, we make provision for the constitution of all criminal Courts subordinate to the High Court. Besides the ordinary Courts, power is given to the Local Government to appoint Additional Sessions Judges and Assistant Sessions Judges, whose powers will be on the same footing as the Assistant Sessions Judges at present existing in Bombay.

13. We have grouped, in several consecutive sections, the powers, judicial and miscellaneous, of Magistrates. Section 20 sets forth the punishments which Magistrates of the first, second and third classes may inflict: section 21 gives a list of all the principal miscellaneous magisterial powers, and the following sections, 22—29, specify which of these powers are to be inherent in each class of Magistrates, and which of them may be conferred on Magistrates by the Local Governments and the Magistrate of the District, respectively.

14. Sections 32—34 deal with the effect of irregularities. With a view to preventing trials being improperly set aside on account of irregularities not involving a substantial failure of justice, we have provided, in the case of all the most probable irregularities, what the precise effect of an irregularity shall be.

15. We have provided that the Magistrate of the District may distribute the criminal business of his district locally, by giving to specified Magistrates the power to entertain complaints in certain areas.

16. The position of the Magistrate of the District in relation to all other Magistrates having jurisdiction in the district has been distinctly defined: all other Magistrates, including Magistrates in charge of a division of a district, have been made subordinate to him, and we propose to invest him with power to withdraw any case or class of cases from a Subordinate Magistrate, and to try it himself or transfer it to any other Court of competent jurisdiction.

17. The Local Government is empowered to create Divisions of Districts, and we have clearly described the position of the Magistrate in charge of a Division of a District, and his relations to the Magistrate and other local officials.

18. In the districts where there are Commissioners and Deputy Commissioners, we have provided that the Chief Executive Officer of a District may try, as a Magistrate, cases not punishable with death; but in any case in which a sentence of more than three years' imprisonment is passed, the order must be confirmed by the Court of Session.

19. We have provided for the creation of Special Magistrates and Benches of Magistrates.

20. We have provided that the High Court may transfer any case from one subordinate Court to another, or may itself dispose of it, following the procedure of the Court from which the case was transferred.

21. We have inserted a chapter dealing with the appointment of Public Prosecutors, and defining the conditions on which private individuals may be allowed to conduct prosecutions.

22. We have added "Murder" and "Offences against the State" to the list of offences which it is the duty of the public to report: and we have embodied several provisions of the Bengal Regulations, which define the responsibility of landholders and others for the detection and prevention of local crime.

23. We have added sections empowering private individuals to arrest, in non-bailable cases, for offences for which a Police officer could arrest without warrant when committed in his sight; a power which at present exists, but is not distinctly conferred by law. In the chapter on Police investigations, we have rendered it obligatory to reply to questions asked by a Police officer, and we propose to provide that a Magistrate may assist the Police, when necessary, by coming to the spot, and recording depositions or confessions.

24. We have inserted a section to provide for the arrest, by masters and mates of British merchant vessels, of deserters from such vessels, and have defined the duty and responsibility of the Police in this matter.

25. We have made the venue sections of the Code applicable to Police inquiries, so that henceforth the same principles will guide a Magistrate and a Police officer in determining whether he has jurisdiction to inquire or to investigate.

26. We have provided that Police officers, deputed by the officer in charge of the Police station to make an investigation, should have power to take the statements of persons and search for any necessary evidence, in the same manner as the officer in charge of the Police station.

27. We have cleared up a doubt which previously existed as to the detention in Police custody by order of a Magistrate, and whilst we have not required the accused person to be at once brought before a Magistrate—as that course would defeat the object in view—we have provided that, if such an order is passed by a subordinate Magistrate, he shall report the fact and his reasons for passing the order to the Magistrate of the District or of the division of the district. Thus securing a close supervision over the grant of these orders.

28. We have provided that officers in charge of a Police station holding inquests, may summon any necessary witnesses, and we have empowered Magistrates to hold inquests in substitution for, or in addition to, the inquest by the Police. It is proposed also that any powers exercisable by a subordinate Police officer may be exercised by his superior throughout the local jurisdiction of the superior.

29. In Part IV, we have distinctly defined the classes of Magistrates who may entertain complaints, act without any complaint, or commit to the Court of Session, and have set forth the procedure necessary for compelling appearance.

30. In chapter XIII, we have, following the provisions of an old Regulation, provided for the issue of a warrant to landholders and other persons for the apprehension of criminals on their estates.

31. We have provided that the dismissal of a summons case shall operate as an acquittal.

32. In chapter XIV, we have cleared up the doubt which formerly existed as to whether a Court might, except in summons cases, allow an offence which was by law compoundable, to be compounded in Court. We recommend that this should be allowed.

33. In chapter XVIII, we have provided a procedure for the summary trial of all summons cases and certain other specified offences. We have made the power to hold summary trials inherent in the Magistrate of the District, but have empowered the Local Government to invest first class Magistrates or Benches of Magistrates with all or any of the powers mentioned in this chapter. The chief feature of the summary trial, as we propose it, is that instead of the usual record of the proceedings, there will be a mere register in non-appealable cases, and a curtailed record of the evidence in appealable cases. In summary trials held by Magistrates of the first class or Benches of Magistrates exercising first class powers, there will be no appeal from a sentence of three months' imprisonment or fine not exceeding two hundred rupees.

34. In chapter XIX, section 249, we have provided in the case of trials by a Session Judge that the depositions given before the committing Magistrate may be referred to and used by the Court.

35. We have provided that an Appellate Court may, if it think fit, enhance the sentence passed by the original Court; but if the sentence was passed by a Magistrate, the punishment is not to exceed that which a first class Magistrate could award, and we have made provision for notice of appeal being given in certain cases to the prosecution.

36. We have explicitly stated, in the chapter on Trials before the Court of Session, the privilege of counsel for the prosecution and defence to address the Court in the conduct of their case, and we have given the Court power to examine the accused at any stage of the proceedings.

37. With a view to emphasizing the responsibility of the Magistrate of the District for the peace and order of the district, we have provided that appeals from orders by Magistrates to furnish security for good behaviour shall, in every instance, lie to this officer.

38. In the chapter on Reference, we have provided that the High Court shall have the same powers in cases tried by juries as in cases tried with the aid of assessors.

39. We have somewhat amplified the powers of the High Court as to revision.

40. We have inserted sections in the chapter on Trials before the Court of Session defining the relative duties of the Judge and the jury.

41. We have allowed Appellate Courts desiring further evidence the option of taking such evidence themselves, or of ordering it to be taken.

42. We have given authority to the High Court to postpone and commute a sentence of death passed on a pregnant woman.

43. We have provided that, when a person sentenced to whipping is incapable, on medical grounds, of undergoing the whole of the sentence, the Court may pass any other sentence in lieu of the part of the whipping not undergone.

44. In chapter XXIV, section 328, we have provided that, in cases where, without objection on the part of the accused, evidence has been taken partly by one Magistrate and partly by another, the conviction may, if the accused person has not been prejudiced, be upheld.

45. In section 327, we have provided that, in the case of accused persons who abscond, any competent Court may record the statements of persons acquainted with the facts of the case, and that such statements shall subsequently be available for the purpose of the trial.

46. Commitments made on evidence partly recorded by one officer and partly by another will, in every case, be sustainable.

47. We have provided for the issue of a Commission by the High Court or Court of Session for the purpose of taking evidence in cases in which serious inconvenience would result from requiring the personal attendance of the witness.

48. In cases where the punishment consists only of fine, we have provided that the imprisonment in default of payment of fine shall not exceed the imprisonment the Court is competent to inflict as a substantive sentence.

49. We have added explanations and illustrations to elucidate the law relative to the power of the Courts to try two or more offences at one time, as the corresponding section of Act XXV of 1861 has given rise to a very large number of constructions by the superior Courts, and several of these rulings enunciate conflicting principles.

50. In order to render section 75 of the Indian Penal Code operative, we have provided that persons coming within its provisions shall ordinarily be committed.

51. We have empowered the Governor General in Council and the Local Government to revoke a conditional pardon granted by him or by it. This is to meet the difficulty of proving in a Court of justice that a man knows more than he pretends to know.

52. We have provided that, in addition to summons cases, the Court may, in the trial of certain specified offences, record evidence in the mode provided for summons cases. The object being to simplify the record in trials where technical points are not likely to occur.

53. We have restricted the power to grant warrants of search for letters in the Post Office to Magistrates of Districts.

54. Under the Criminal Procedure Code, an officer in charge of a Police station could require an officer in charge of another Police station to search for anything necessary to the conduct of an investigation, but no power was given to the latter to comply with the requisition. We have supplied the omission.

55. We have legalized the existing practice of searching arrested persons.

56. We have empowered the Court of Session in all cases to direct the admission of accused persons to bail.

57. In the chapter (XXIX) on the formation of lists of assessors and jurors, we have provided that the Sessions Judge shall sit with the Collector. We have exempted all officers in civil employ superior in rank to a Magistrate of the District, and have given power to the Local Government to exempt any person from liability to serve as a juror or assessor.

58. We have provided, generally, that distress warrants may be executed in the district in which they are issued and in any district in which they may be endorsed.

59. We have restricted the power of tendering a pardon, on condition of evidence being given, to cases triable exclusively by a Court of Session.

60. In chapter XXVI, we have given Magistrates, in warrant and sessions cases, the power of refusing to summon any witness who clearly appears to be unnecessary; we have extended to all warrant and non-cognizable summons cases the provision now applicable only to sessions cases, enabling the Court to require deposit of the expenses of a witness prior to summoning him.

61. We have made the necessary provision for securing documentary evidence, and for impounding such documents as the Court thinks fit.

62. In chapter XXXI, we have provided, in the case of criminal lunatics, that it shall rest with the Local Government to decide whether a criminal lunatic, who is pronounced harmless by a Commission, shall or shall not be released.

63. We have redrawn the chapter on Charges, with a view to increased simplicity; and we have introduced provisions as to joinder of several charges in a single trial, and of several persons in a single charge.

64. In chapter XXXIV, we have stated the matters which the finding must necessarily contain, but have left the Courts to adopt the form in which those matters shall be expressed.

65. In chapter XXXV, with a view to avoiding miscarriages of justice, we have provided that a sanction for a prosecution under any specified section shall cover a prosecution for the same facts under any other section.

66. We have provided that any person having the care of a married woman may institute a prosecution for adultery committed with her. This provision is designed to meet the case of Native soldiers while on service.

67. We have added a chapter on the dispersion of unlawful assemblies, in which the duties of the Magistrate, the officer commanding the troops, and the soldiery are distinctly laid down.

68. In chapter XXXVIII, we have distinctly provided that the provisions for taking security for good behaviour shall not apply to European British subjects; such cases appear to be sufficiently and more appropriately dealt with under the European Vagrancy Act.

69. We have restricted the power to make orders to prevent obstructions and prohibit nuisances to Magistrates of Districts and Magistrates of Divisions of Districts, and to such Magistrates as may be specially authorized to exercise this power.

70. In chapter XXXIX, we have provided, in local nuisance cases, for the mode in which the jury shall be summoned, and in which its duties shall be performed.

71. In chapter XL, we have given power to criminal Courts convicting any person of an offence attended with criminal force, by which any person was dispossessed of immoveable property, to restore the dispossessed person to possession without prejudice to the decision of a civil Court.

72. Under chapter XLI, we have provided that an order of maintenance may be enforced as a warrant for the levy of a fine in any district in which the person to whom the order is addressed may happen to be.

73. In the schedule, we have to some degree extended the powers of Magistrates. There are many offences punishable under the Indian Penal Code with very severe sentences, but which embrace within their definitions crimes of every shade, from the offence which demands the heaviest penalty, to that which is suitably punished by a short term of imprisonment. In extending the power of the Courts to try offences, we have left it to their discretion to exercise jurisdiction or to commit for trial as the circumstances of each case may demand.

74. Subject to the above amendments, we recommend that the Bill be passed.

75. The Committee wish, in conclusion, to record the valuable services which have been rendered by Captain Newbery throughout the preparation of this Bill, and the important assistance which they have received from his experience, industry and skill. It is in no small degree owing to him that the Bill has, within the limited time prescribed, been advanced to its present stage of completeness.

J. F. STEPHEN.
G. CAMPBELL.
J. STRACHEY.
J. F. D. INGLIS.
W. ROBINSON.
F. S. CHAPMAN.
R. STEWART.
J. R. BULLEN SMITH.
F. R. COCKERELL.

The 12th March 1872.

CRIMINAL PROCEDURE BILL.

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A Bill for regulating the Procedure of the Courts of Criminal Judicature.

[As amended by the Select Committee.]

Part I, C. I,
ss. 1-4.

WHEREAS it is expedient to consolidate and amend the law regulating the Procedure of the Courts of Criminal Judicature not established by Royal Charter; It is hereby enacted as follows:—

PART I.

CHAPTER I.

PRELIMINARY, REPEAL, LOCAL EXTENT AND DEFINITIONS.

Short title. 1. This Act may be called "The Code of Criminal Procedure."

Local extent. It extends to the whole of British India, except the presidency towns;

Commencement. And it shall come into force on the first day of September 1872.

2. The enactments mentioned in the first schedule hereto annexed are repealed.

Wherever a special form of procedure is prescribed by any law, not expressly repealed in the first schedule to this Act, it shall not be deemed to have been impliedly repealed by reason of its being inconsistent with the provisions of this Code.

In every Act passed before this Act, in which reference is made to the Code of Criminal Procedure, such reference shall be taken to be made to this Act.

In every Act, passed before this Act, the expressions "officer exercising the powers of a Magistrate," "Subordinate Magistrate, first class" and "Subordinate Magistrate, second class" shall, respectively, be deemed to mean "Magistrate of the first class," "Magistrate of the second class," and "Magistrate of the third class," as defined in this Act.

The references made in the Acts mentioned in column one of the fifth schedule to this Code shall be taken to be made to the sections of this Code given in column three of the said schedule.

Notifications published and orders made under any section of any Act hereby repealed, shall be deemed to have been published and made under the corresponding section of this Act.

3. Cases pending in any Criminal Court when this Act comes into force shall be decided as far as may be according to the procedure provided in this Act.

4. In this Act the following words and expressions have the following meanings unless a different intention appears from the context:—

"Special law." "Special law" means a law applicable to a particular subject.

"Local law."

"Local law" means a law applicable to a particular part of British India.

"Investigation."

"Investigation" includes all the proceedings by the Police, authorized by this Act, for the collection of evidence.

"Inquiry" means any inquiry which may be conducted by a Magistrate or Court under this Act.

"Inquired into" means and includes every proceeding preliminary to trial.

"Inquired into."

"Trial" means the proceedings taken in Court after a charge has been drawn up and includes the

"Trial."

punishment of the offender.

It includes the proceedings under Chapters XVI and XVIII from the time when the accused appears in Court.

"Judicial Proceeding" means any proceeding in the course of which evidence is taken.

"Written" includes "printed," "lithographed," "photographed" and "engraved."

"Criminal Court" means and includes every Judge or Magistrate, or body

"Criminal Court." of Judges or Magistrates inquiring into or trying any criminal case or engaged in any judicial proceeding.

"Province" means the territories under the Government or Administration of any Local Government.

"Presidency town" means the local limits of the ordinary criminal jurisdiction

"Presidency town." of the High Courts of Calcutta, Madras or Bombay.

"High Court" means, in reference to proceedings against European British subjects, or persons

"High Court." jointly charged with European British subjects, the High Courts of Calcutta, Madras, Bombay, the High Court for the North-Western Provinces, and the Chief Court of the Panjáb.

In other cases "High Court" means the highest Court of criminal appeal or revision in any province.

"Session case" means and includes all cases specified in column 7 of the fourth schedule to this Act as

"Session case." cases triable by a Court of Session and all cases which Magistrates commit to a Court of Session although they might have tried them themselves.

In the case of offences created by special and local laws, "Session case" means cases which are triable by the Court of Session or which the Magistrate commits to the Court of Session though he might have tried them himself.

"Magistrate's case" means and includes all

"Magistrate's case." cases specified in column 7 of the fourth schedule to this Act as cases triable by Magistrates and all cases which Magistrates try themselves, although they might have committed them for trial to a Court of Session.

"Cognizable offence or case" means an offence

"Cognizable offence or case." for or a case in which a police officer may, by any law in force, arrest without warrant.

18. II, "Non-cognizable offence or case" means an offence for or a case in which a police officer may not arrest without warrant.

—IV, "Non-cognizable offence or case." fence or case." rest without warrant.

—19. "Summons case" means an offence of the class described in section one hundred and forty-eight.

"Summons case." "Warrant case" means an offence of the class described in section one hundred and forty-nine.

"Warrant case." "Bailable offence or case" means an offence for or a case in which bail may be taken under the fourth schedule to this Act or by any other law in force.

"Bailable offence or case." "Non-bailable offence or case" means an offence for or a case in which bail may not be taken under the fourth schedule to this Act or by any law in force.

PART II.

CONSTITUTION AND POWERS OF THE CRIMINAL COURTS.

CHAPTER II.

OF CRIMINAL TRIALS AND INQUIRIES.

5. There shall be four Grades of Criminal Courts, grades of Criminal Courts in British India—

I.—The Court of the Magistrate of the 3rd Class.

II.—The Court of the Magistrate of the 2nd Class.

III.—The Court of the Magistrate of the 1st Class.

IV.—The Court of Session.

6. All inquiries shall be held by Magistrates according to the provisions hereinafter contained.

7. All Criminal trials in British India shall be held before the Courts specified in the fourth schedule to this Act, or before the Courts specified in any law by which the offence is created, according to the provisions hereinafter contained.

8. Offences punishable under any law, other than the Indian Penal Code, containing no distinct provision as to the Court or Officer before which or before whom they are to be tried, may be inquired into and tried, according to the provisions hereinafter contained, by the Criminal Courts appointed under this Act. But no such Court shall award any sentence in excess of its ordinary powers, or try any such offence if it be punishable with more than twice the punishment which such Court is competent to inflict.

9. All Judges and Magistrates shall be appointed and may be removed by the Local Government, but such officers as are now appointed or removed by the Government of India shall continue to be so appointed or removed.

10. All existing Judges and Magistrates shall be deemed to have been appointed under this Act.

11. Offences committed by European British subjects shall be inquired into and tried according to the provisions of Chapter VII, and not otherwise, but the other provisions of this Act shall apply to all per-

sons without distinction of race unless a contrary intention is expressed.

CHAPTER III.

OF COURTS OF SESSION.

12. Every province shall be divided into Sessions Divisions.

13. The Local Government shall have power to alter or vary from time to time the number or extent of such divisions.

14. The existing local jurisdictions of Courts of Session shall be Sessions Divisions, unless and until they are so varied or altered.

15. There shall be a Court of Session in every Sessions Division.

It shall have power to try any offence and to pass upon any offender any sentence authorized by law, subject to the provisions of this Act.

16. There shall be a Sessions Judge for every Sessions Division. The Sessions Judge shall exercise all the powers of the Court of Session in his Sessions Division.

17. The Local Government may appoint Additional Sessions Judges or Joint Sessions Judges who shall exercise all the powers of a Court of Session in one or more Sessions Divisions in which they may be directed to act, but shall try such cases only as the Local Government directs them to try, or as the Sessions Judge of the Division makes over to them for trial.

18. The Local Government may also appoint Assistant Sessions Judges who shall exercise all the powers of a Court of Session in the Sessions Division to which they may be attached, except the power of passing sentences of death, or transportation, or imprisonment for more than seven years, but they shall try those cases only which the Sessions Judge of the Sessions Division makes over to them either by general orders or by a special order.

Any sentence of more than three years' imprisonment passed by an Assistant Sessions Judge shall be subject to confirmation by the Sessions Judge. The Sessions Judge may either confirm, modify or annul such sentence of the Assistant Sessions Judge.

CHAPTER IV.

OF MAGISTRATES AND THEIR POWERS.

19. Magistrates shall be either—

Magistrates of the First Class,
Magistrates of the Second Class, or
Magistrates of the Third Class.

art II, C. IV,
ss. 20—22.

20. The powers of Magistrates in respect to the trial of offences and to passing sentences on persons convicted of them are as follows—

Powers of Magistrates,
First Class. Magistrates of the First Class may pass the following sentences:—

Imprisonment not exceeding the term of two years (including such solitary confinement as is authorized by law);

Fine to the extent of one thousand rupees;

Whipping.

Powers of Magistrates,
Second Class. Magistrates of the Second Class may pass the following sentences:—

Imprisonment not exceeding six months;

Fine not exceeding two hundred rupees;

Whipping.

Powers of Magistrates,
Third Class. Magistrates of the Third Class may pass the following sentences:—

Imprisonment not exceeding one month;

Fine not exceeding fifty rupees.

A Magistrate of the Second or Third Class may not pass a sentence of solitary confinement, nor may a Magistrate of the Third Class pass a sentence of whipping.

Any Magistrate may pass any lawful sentence combining any of the sentences which he is authorized by law to pass.

21. In addition to the powers given in section twenty, the following powers are conferred, as hereinafter provided, upon Magistrates by this Act:—

Powers conferred upon
Magistrates.

- (1.) Power to make over cases to a Subordinate Magistrate. (s. 44.)
- (2.) Power to pass a sentence on proceedings recorded by a Subordinate Magistrate. (s. 46.)
- (3.) Power to withdraw cases and to try or refer them for trial. (s. 47.)
- (4.) Power to withdraw or refer appeals from convictions by 2nd and 3rd grade Magistrates. (s. 47.)
- (5.) Power to arrest an accused person found in Court. (s. 104.)
- (6.) Power to order the Police to investigate an offence. (s. 110.)
- (7.) Power to record confessions or statements during a Police investigation. (s. 122.)
- (8.) Power to authorize detention of a person during a Police investigation. (s. 124.)
- (9.) Power to hold an inquest. (s. 135.)
- (10.) Power to entertain complaints and receive Police reports. (s. 141.)
- (11.) Power to entertain cases without complaint. (s. 142.)
- (12.) Power to commit for trial. (s. 143.)
- (13.) Power to issue process for person within jurisdiction who has committed an offence outside Magistrate's local jurisdiction. (s. 157.)
- (14.) Power to direct warrant to landholder. (s. 162.)
- (15.) Power to arrest offender in presence of Magistrate. (s. 166.)
- (16.) Power to endorse warrant, or to order the removal of an accused person arrested under a warrant. (ss. 168 and 170.)

- (17.) Power to issue proclamation. (ss. 171 and 353.)
- (18.) Power to attach and sell. (ss. 172 and 354.)
- (19.) Power to try summarily. (s. 222.)
- (20.) Power to hear appeals from convictions by 2nd and 3rd class Magistrates. (s. 266.)
- (21.) Power to call for proceedings. (ss. 295 and 296.)
- (22.) Power to quash convictions in certain cases. (s. 328.)
- (23.) Power to issue a search-warrant for letter in Post Office. (s. 369.)
- (24.) Power to endorse a search-warrant and order delivery of thing found. (ss. 372, 373 and 376.)
- (25.) Power to issue search-warrant otherwise than in the course of an inquiry. (s. 377.)
- (26.) Power to revise bail orders. (s. 398.)
- (27.) Power to sell perishable property of a suspicious character. (s. 415.)
- (28.) Power to sell suspicious or stolen property. (s. 417.)
- (29.) Power to demand security to keep the peace. (s. 491.)
- (30.) Power to discharge recognizances to keep the peace. (s. 500.)
- (31.) Power to demand security for good behaviour. (ss. 504 and 505.)
- (32.) Power to discharge person bound to be of good behaviour. (s. 511.)
- (33.) Power to issue order to prevent obstruction, &c. (s. 518.)
- (34.) Power to issue order prohibiting repetition of nuisance. (s. 519.)
- (35.) Power to make orders, &c., in local nuisance cases. (s. 521.)
- (36.) Power to make orders, &c., in possession cases. (s. 530.)
- (37.) Power to make orders of maintenance. (s. 536.)

Powers common to all
Magistrates.

22. Magistrates of all classes shall, as such, have the following powers:—

- (1.) Power to arrest an accused person found in Court. (s. 104.)
- (2.) Power to record confessions or statements during a Police investigation. (s. 122.)
- (3.) Power to authorize detention of a person during a Police investigation. (s. 124.)
- (4.) Power to arrest offender in the presence of Magistrate. (s. 166.)
- (5.) Power to endorse warrant, or to order the removal of an accused person arrested under a warrant. (ss. 168—170.)
- (6.) Power to issue proclamation in cases judicially before him. (ss. 171 and 353.)
- (7.) Power to attach and sell moveable property in cases judicially before him. (s. 354.)
- (8.) Power to endorse a search-warrant and order delivery of thing found. (ss. 372, 373 and 376.)
- (9.) Power to sell perishable property of a suspicious character. (s. 415.)

H. C. 23. In addition to the powers mentioned in section twenty-two a Magistrate of the 3rd class may be invested with the following powers:—

- (a.) By the Local Government—
- (1.) Power to hold inquests. (s. 135.)
 - (2.) Power to entertain complaints of offences in cases in which he has jurisdiction to try or to commit for trial. (s. 141.)
 - (3.) Power to commit for trial. (s. 143.)
 - (4.) Power to issue order to prevent obstruction, &c. (s. 518.)
 - (5.) Power to issue order prohibiting repetition of nuisance. (s. 519.)
- (b.) By the Magistrate of the District—
- (1.) Power to hold inquests. (s. 135.)
 - (2.) Power to entertain complaints of offences in cases in which he has jurisdiction to try or to commit for trial. (s. 141.)
 - (3.) Power to issue order to prevent obstruction, &c. (s. 518.)
 - (4.) Power to issue order prohibiting repetition of nuisance. (s. 519.)

24. Magistrates of the 2nd class shall, as such, in addition to the powers mentioned in section twenty-two, have the following power:—

- (1.) Power to order the Police to investigate an offence in which he has jurisdiction to try or to commit for trial. (s. 110.)

25. In addition to the powers given and referred to in section twenty-four, a Magistrate of the 2nd class may be invested with the following powers:—

- (a.) By the Local Government—
- (1.) Power to hold inquests. (s. 135.)
 - (2.) Power to entertain complaints and receive police reports in cases in which he has jurisdiction to try or to commit for trial. (s. 141.)
 - (3.) Power to entertain without complaint cases which he has jurisdiction to try or to commit for trial. (s. 142.)
 - (4.) Power to commit for trial. (s. 143.)
 - (5.) Power to issue order to prevent obstruction, &c. (s. 518.)
 - (6.) Power to issue order prohibiting repetition of nuisance. (s. 519.)
- (b.) By the Magistrate of the District—
- (1.) Power to hold inquests. (s. 135.)
 - (2.) Power to entertain complaints and receive police reports in cases in which he has jurisdiction to try or to commit for trial. (s. 141.)
 - (3.) Power to issue order to prevent obstruction, &c. (s. 518.)
 - (4.) Power to issue order prohibiting repetition of nuisance. (s. 519.)

26. Magistrates of the 1st class shall, as such, in addition to the powers mentioned in sections twenty-two and twenty-four, have the following powers:—

- (1.) Power to commit for trial. (s. 143.)
- (2.) Power to issue search warrant otherwise than in the course of an inquiry. (s. 377.)

- (3.) Power to demand security to keep the peace. (s. 491.)

- (4.) Power to demand security for good behaviour. (ss. 504 and 505.)

- (5.) Power to make orders, &c., in possession cases. (s. 530.)

- (6.) Power to make orders of maintenance. (s. 536.)

27. In addition to the powers given and referred to in section twenty-six, a Magistrate of the 1st class may be invested with the following powers:—

- (a.) By the Local Government—

- (1.) Power to make over cases taken up on complaint, &c., to a subordinate Magistrate. (s. 44.)

- (2.) Power to hold inquests. (s. 135.)

- (3.) Power to entertain complaints of offences, and receive police reports. (s. 141.)

- (4.) Power to entertain cases without complaint. (s. 142.)

- (5.) Power to issue process for person within jurisdiction who has committed an offence outside Magistrate's local jurisdiction. (s. 157.)

- (6.) Power to try summarily. (s. 222.)

- (7.) Power to hear appeals from convictions by 2nd and 3rd class Magistrates. (s. 266.)

- (8.) Power to sell suspicious or stolen property. (s. 417.)

- (9.) Power to issue order to prevent obstruction, &c. (s. 518.)

- (10.) Power to issue order prohibiting repetition of nuisance. (s. 519.)

- (11.) Power to make orders, &c., in local nuisance cases. (s. 521.)

- (b.) By the Magistrate of the District—

- (1.) Power to hold inquests. (s. 135.)

- (2.) Power to entertain complaints of offences, and receive police reports. (s. 141.)

- (3.) Power to issue order to prevent obstruction, &c. (s. 518.)

- (4.) Power to issue order prohibiting repetition of nuisance. (s. 519.)

28. Magistrates of Divisions of Districts shall, as such, have all the powers given to 1st class Magistrates, and referred to in section twenty-six, and, in addition, shall have the following powers:—

- (1.) Power to pass sentence on proceedings recorded by a subordinate Magistrate. (s. 46.)

- (2.) Power to withdraw cases (but not appeals) and to try or refer them for trial. (s. 47.)

- (3.) Power to hold inquests. (s. 135.)

- (4.) Power to entertain complaints of offences, and receive police reports. (s. 141.)

- (5.) Power to entertain cases without complaint. (s. 142.)

- (6.) Power to issue process for person within jurisdiction who has committed an offence outside Magistrate's local jurisdiction. (s. 157.)

- (7.) Power to issue search warrant otherwise than in the course of an inquiry. (s. 360.)

- (8.) Power to sell suspicious or stolen property. (s. 417.)

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IF, ss. 29
—37.

- (9.) Power to issue order to prevent obstruction, &c. (s. 518.)
- (10.) Power to issue order prohibiting repetition of nuisance. (s. 519.)
- (11.) Power to make orders in local nuisance cases. (s. 521.)

Provided that, if a Magistrate of a Division of a District exercise the powers of a 2nd class Magistrate, he shall not have power to demand security to keep the peace.

29. In addition to the powers given and referred to in section twenty-eight, the Local Government may confer on a Magistrate of a Division of a District, exercising the powers of a 1st class Magistrate, the following powers:—

- (1.) Power to try summarily. (s. 222.)
- (2.) Power to hear appeals from convictions by 2nd and 3rd class Magistrates. (s. 266.)

30. Magistrates of Districts may, as such, exercise all the powers mentioned in section twenty-one.

31. All other powers given by this Act or by any other law in force may be exercised by the officers or courts to whom or to which they are given.

32. If any Magistrate, not being empowered by law to act in the matter, does any one of the following things:—

- (1) If he makes over a case taken up on complaint to another Magistrate,
- (2) If he withdraws a case and tries it himself, or refers a case for trial,
- (3) If he orders the Police to investigate an offence,
- (4) If he holds an inquest,
- (5) If he entertains a complaint or receives a Police report,
- (6) If he issues process for the apprehension of a person who is within his local jurisdiction, and has committed an offence outside his local jurisdiction,
- (7) If he issues a search warrant otherwise than in the course of an inquiry,

his proceedings shall not be set aside on that ground.

33. If any Magistrate, not being empowered by law, commits an accused person to take his trial before a Court of Session or High Court, the Court to which the commitment was made may, after perusal of the proceedings, accept the commitment if it considers that the accused person has not been prejudiced, unless the accused person has objected to the jurisdiction of the committing Magistrate during the inquiry and before the order of commitment.

If it considers that the accused person was prejudiced, or if he objected to the jurisdiction of the committing Magistrate during the inquiry, and before the order of commitment, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate.

34. If any Magistrate, not being empowered by law to act in the matter, does any of the following things, his proceedings shall be void. That is to say:—

- (1) If he passes a sentence on proceedings recorded by another Magistrate,

- (2) If he entertains a case without complaint,
- (3) If he attaches and sells property under section 172,
- (4) If he tries an offender summarily,
- (5) If he decides an appeal,
- (6) If he calls for proceedings,
- (7) If he issues a search warrant for a letter in the Post Office,
- (8) If he revises a bail order,
- (9) If he sells suspicious or stolen property under section 417,
- (10) If he demands security to keep the peace,
- (11) If he discharges recognizances to keep the peace,
- (12) If he demands security for good behaviour,
- (13) If he discharges a person lawfully bound to be of good behaviour,
- (14) If he makes an order in a local nuisance case,
- (15) If he issues an order to prevent an obstruction,
- (16) If he prohibits the repetition of a nuisance,
- (17) If he makes an order in a possession case, or
- (18) If he makes an order for maintenance.

THE MAGISTRATE OF THE DISTRICT.

35. In every district there shall be a Magistrate of the First Class appointed by the Local Government who shall be called the Magistrate of the District and shall exercise throughout his district all the powers of a Magistrate.

36. In the territories subject to the Lieutenant-Governor of the Panjáb and in the territories administered by the Chief Commissioners of Oudh, the Central Provinces and British Burma, in Coorg, and in those parts of the other provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may invest the Deputy Commissioner, or other chief officer charged with the executive administration of the district in criminal matters, with power to try as a Magistrate all offences not punishable with death, and to pass sentence of imprisonment for a term not exceeding seven years including such solitary confinement as is authorized by law, or fine, or both, and whipping, or any combination of these punishments authorized by law; but any sentence of upwards of three years' imprisonment passed by any such officer shall be subject to the confirmation of the Sessions Judge to whom such Deputy Commissioner is subordinate.

SUBORDINATE MAGISTRATES.

37. The Local Government may appoint as many other persons besides the Magistrate of the District, as it thinks fit, to be Magistrates of the first, second or third class in the District.

All such Magistrates shall be subordinate to the Magistrate of the District.

I.C. IV, The Local Government shall not have power to direct that any Magistrate may try any offence which Magistrates of his class are not authorized to try, or pass any sentence which Magistrates of his class are not authorized to pass by section twenty.

38. The Local Government may, by notification in the official Gazette, prescribe the local limits of the jurisdiction of a Magistrate of the District and may by such notification from time to time alter such jurisdiction.

39. The Local Government may divide any district into divisions, and from time to time alter their limits. All existing divisions of districts which are now usually put under the charge of a Magistrate shall be divisions until they are so varied or altered.

40. The Local Government may place any Magistrate of the 1st or 2nd class in charge of a Division of a District.

Such Magistrate shall be called a Magistrate of a Division of a District and shall exercise the powers conferred on him under this Act, or under any law for the time being in force, subject to the control of the Magistrate of the District.

The Local Government may, if it thinks fit, delegate its powers under this section to the Magistrate of the District.

41. Every Magistrate in a Division of a District shall be subordinate to the Magistrate of the Division of the District, subject, however, to the general control of the Magistrate of the District.

42. The Local Government may confer upon any person all or any of the powers of a 1st, 2nd or 3rd class Magistrate, in respect to particular offences, or to a particular class or particular classes of offences, or in regard to offences generally, in any part of a district or in any one or more districts, subject to such Local Government.

Such Magistrates shall be called "Special Magistrates."

43. In conferring powers under this Act the Local Government may empower persons specially by name, or classes of officials generally by their official titles.

44. The Magistrate of the District or any Magistrate of a division of a district, may make over any criminal case taken up by him on suspicion, or brought before him on complaint, or on report by the Police, for inquiry or trial to any Magistrate subordinate to him, to be dealt with to the extent of the powers with which the Subordinate Magistrate may have been invested under the provisions hereinbefore contained.

The Magistrate making the reference may, if the case was brought forward on complaint, before such reference, examine the com-

plainant as prescribed in this Act, but if he does not do so the Magistrate to whom the case is referred shall proceed as if the complaint had been made to him.

The order of reference shall be recorded in a proceeding, and, if the case has been brought forward on the report of a Police officer, shall be recorded on such report; and all processes issued for causing the attendance of the accused person or the witnesses shall direct them to attend before such Court.

45. If, in the course of a proceeding before a Magistrate, the evidence appears to him to warrant a presumption that the accused person has been guilty of an offence which such Magistrate is not competent to try,

or for which he is not competent to commit the accused person for trial,

he shall stay proceedings and submit the case to any Magistrate to whom he is subordinate, or to such other Magistrate having jurisdiction as the Magistrate of the District directs.

The Magistrate to whom the case is submitted shall either try the case himself or refer it to any officer subordinate to him having jurisdiction, or he may commit the accused person for trial.

In any such case, such Magistrate or other officer as aforesaid shall examine the parties and witnesses, and shall proceed in all respects as if no proceedings had been held in any other Court.

But any statement or confession duly made by an accused person in the course of the proceedings before the Magistrate before whom the case was originally brought shall be admissible as evidence in all subsequent proceedings.

46. Whenever a Magistrate of the 2nd or 3rd class, having jurisdiction, finds an accused person guilty, and considers that he ought to receive a more severe punishment than such Magistrate is competent to adjudge, he may record the finding and submit his proceedings and forward the accused person to the Magistrate to whom he is subordinate.

The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case, and summon any further witnesses and take their evidence, and shall pass such sentence or order in the case as he deems proper, and as is according to law. Provided that he shall not exceed the powers ordinarily exercisable by him under section twenty of this Act.

The Magistrate who originally dealt with the case may, if he is empowered to hold inquiries into cases triable by the Court of Session and to commit persons to take their trial before such Court, instead of submitting his proceedings to another Magistrate, commit the accused person for trial before the Court of Session instead of finding him guilty.

47. Magistrates of Districts and Magistrates of divisions of Districts may respectively withdraw any criminal case from any Magistrate sub-

Art II, C. IV
§ V, ss. 48
—62.

ordinate to them, and may inquire into or try the case themselves, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

Magistrates of districts may withdraw any criminal appeal from any Subordinate Magistrate who has been authorized to hear appeals from the convictions of 2nd and 3rd class Magistrates, and may refer criminal appeals to any competent Magistrate subordinate to them.

48. The Local Government may authorize the Magistrate of the District to withdraw from the Magistrates subordinate to them, whether in charge of divisions of districts or not, either such classes of cases as he thinks proper, or particular classes of cases.

Local Government may empower Magistrates of Districts to withdraw classes of cases.

49. The Magistrate of the District, under the general or special orders of the Local Government, may authorize any Magistrate subordinate to him to entertain complaints arising within certain local limits, and may from time to time vary such orders. Provided that no such Magistrate shall be authorized to entertain any complaint of any offence which he is not competent to try or to commit for trial.

Local Government may authorize Magistrate of district to distribute business by localities.

MAGISTRATES' BENCHES.

50. The Local Government may direct any two or more Magistrates to sit together as a bench, and may invest such bench with the powers of a Magistrate of the 1st, 2nd or 3rd class, and direct it to try such cases or such classes of cases only and within such limits as it thinks fit.

Power to invest Magistrates sitting as a bench with certain powers.

51. In the absence of any special direction as to the powers of any such bench, it shall have the powers of a Magistrate of the highest class to which any one of its members belongs, and who is present taking part in the proceedings.

Powers exercisable by such bench in absence of special directions.

52. The Magistrate of the District may, subject to the general orders of the local Government, make rules for the guidance of Magistrates' benches in his District.

Magistrate of the District may frame rules for guidance of benches.

Such rules shall not be inconsistent with the provisions of this Act and may deal with the following subjects:—

The classes of cases to be tried.

The times and places of sitting.

The constitution of the bench for conducting trials.

The mode of settling differences of opinion which may arise between the Magistrates in session.

53. The Magistrate of the District may vary or annul, from time to time, any rules made by himself or by his predecessor under the last preceding section.

Magistrate of District may vary or annul rules made under section 52.

CONTINUANCE AND ALTERATION OF POWERS.

54. The Local Government may vary or cancel any powers with which any person may have been invested under this Act or any enactment hereby repealed.

Powers may be varied or cancelled.

55. When, in consequence of the office of the Magistrate of a District becoming vacant, any officer succeeds temporarily to the chief executive administration of the district in criminal matters, such officer shall, pending the orders of the Local Government, exercise all the ordinary powers and perform all the duties of the Magistrate of the District.

Powers of officer temporarily succeeding to vacancies in office of Magistrate of District.

56. Whenever any person holding an office in the service of Government, who has been invested with any powers under this Act or any enactment hereby repealed in any district, is transferred to an equal or higher office of the same nature within another district, he shall, unless the Local Government otherwise directs, continue to exercise the same powers in the district to which he is so transferred.

Continuance of powers of officers transferred.

CHAPTER V.

OF PUBLIC PROSECUTORS.

57. The Local Government may, if it thinks proper, appoint officers to be called public prosecutors.

Appointment of public prosecutor.

58. Public prosecutors may be appointed either for a particular case, or for particular classes of cases, or for all cases throughout the whole or any part of any province.

Appointment may be for particular case or generally.

59. Any Court inquiring into or trying any case may permit any person to conduct the case as prosecutor, but no person shall be entitled to do so without such permission. Any person permitted to prosecute may conduct the prosecution personally or by counsel.

Private persons may not act as prosecutors or employ counsel without permission of the Court.

60. The public prosecutor may appear and plead without any written authority before all Courts in which any case under his charge is under inquiry, trial, or appeal, and if any private person instructs any barrister, attorney, pleader, or vakil to prosecute any person in any case under the charge of the public prosecutor, the public prosecutor shall have the management of the case, and such other person shall act under his directions.

He may plead in all Courts in cases under his charge.

Barristers, &c., privately instructed to be under his direction.

61. The public prosecutor may, with the consent of the Court, withdraw any charge against any person in any case of which he is in charge, and upon such withdrawal, if it is made whilst the case is under inquiry, the person accused shall be discharged. If it is made when he is under trial, the person tried shall be acquitted.

Effect of withdrawal of charge by public prosecutor.

62. If an appeal is brought in any case in which any person prosecuted by the public prosecutor has been convicted, notice of such appeal and a copy of

Notice to public prosecutor of appeal in cases prosecuted by him.

- II, C. the grounds of appeal shall be given to such public prosecutor by the Appellate Court, and the Court shall also give him due notice of the time and place at which such appeal is to be heard.

CHAPTER VI.

THE PLACE OF INQUIRY AND TRIAL.

63. Every offence shall be inquired into, and, if tried by a Magistrate, shall be tried in the district in which it was committed. If tried by a Court of Session it shall be tried by that Court of Session to which the Magistrate commits.

Magistrates shall ordinarily commit to the Court of Session for the Sessions Division in which the district to which they are appointed is situated, but the Local Government may direct that any cases or class of cases committed in any district may be tried in any Sessions Division.

64. Whenever it appears to the High Court that such order will promote the ends of justice, or tend to the general convenience of the parties or witnesses, it may direct the transfer of any particular criminal case, or appeal, or class of cases or appeals from a Criminal Court subordinate to its authority, to any other such Criminal Court of equal or superior jurisdiction, or may order that any offence shall be inquired into, or tried in any district or division of a district, other than that in which the offence has been committed, or that it shall be tried before itself. If the High Court withdraws any case from any other Court for trial before itself, it shall observe the same procedure which that Court would have observed if the case had not been so withdrawn.

65. When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried in any district in which any such thing has been done or any such consequence has ensued.

66. When an act is an offence by reason of its relation to any other act which is also an offence, a charge for the first-mentioned offence may be inquired into and tried either in the district in which it happened or in the district in which the offence with which it was so connected happened.

Illustrations.

(a.) A charge of abetment may be inquired into and tried either in the district in which the abetment was committed, or in the district in which the offence abetted was committed.

(b.) A charge of receiving or retaining stolen goods may be inquired into and tried, either in the district in which the goods were stolen, or in any district in which any of them were at any time dishonestly received or retained.

(c.) A charge for wrongfully concealing a person known to have been kidnapped may be inquired into and tried in the district in which the wrongful concealing or in the district in which the kidnapping took place.

67. When it is uncertain in which of several districts an offence was committed; or is committed partly in one district and partly in another; or

where the offence is a continuing one and continues to be committed in more districts than one, or where it consists of several acts done in different districts, it may be inquired into and tried in any one of any of such districts.

Illustrations.

(a.) An offence committed on a journey or voyage may be inquired into and tried in any district through which the person by whom the offence was committed, or the person against whom, or the thing on which, the offence was committed passed in the course of that journey or voyage.

(b.) An offence committed near the boundary between two districts may be inquired into and tried in either.

(c.) A charge of being a thug or of having belonged to a gang of dacoits may be inquired into and tried wherever the person charged happens to be when the charge is made.

(d.) A charge of having escaped from custody may be inquired into and tried wherever the person charged happens to be when the charge is made.

(e.) A charge of criminal misappropriation or of criminal breach of trust may be inquired into and tried either in the district in which the property which is the subject of the offence was received, or in the district or districts in which the whole or any part of it has been misappropriated, or where the offence of criminal breach of trust has been wholly or partly committed.

68. The offence of murder as a thug, dacoity, or murder as a thug, dacoity with murder may be inquired into and tried wherever the person accused may happen to be.

69. Whenever any doubt arises as to the district in which any offence should be inquired into or tried, the High Court within whose jurisdiction the offender is apprehended may decide in which district the offence shall be inquired into or tried.

70. No sentence or order of any Criminal Court shall be liable to be set aside merely on the ground that the investigation, inquiry or trial was held in a wrong district or sessions division, unless it is proved or appears that the person accused was actually prejudiced in his defence, or the prosecutor in his prosecution by such error, in either of which cases a new trial may be ordered.

CHAPTER VII.

OF CRIMINAL JURISDICTION OVER EUROPEAN BRITISH SUBJECTS.

71. The expression "European British subjects" means in this Act—

(1.) All subjects of Her Majesty born, naturalized, or domiciled in the United Kingdom of Great Britain and Ireland or in any of the European, American, or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal.

(2.) The children and grandchildren of any such person by legitimate descent.

72. No Magistrate, or Justice of the Peace, or Sessions Judge shall have jurisdiction to inquire into a complaint or try a charge against a European British subject unless he is himself a European British subject.

rt II, C. No Magistrate shall have such jurisdiction unless he is a Magistrate of the 1st class and a Justice of the Peace.

No Justice of the Peace shall have such jurisdiction unless he is a Magistrate of the 1st class.

73. Any Magistrate who is authorized by law to entertain complaints, may entertain against European British subjects such complaints as he is authorized to entertain in the case of other persons.

If he issues any process for the purpose of compelling the appearance of any European British subject accused of an offence, such process must be returnable before a Magistrate competent to inquire into or try the case.

First class Magistrates being European British subjects, and Justices of the Peace, may inquire into complaints against European British subjects.

74. Any competent Magistrate may inquire into complaints of any offence made against a European British subject.

If the offence complained of is a Magistrate's case and can be adequately punished by such Magistrate, he shall proceed as is hereinafter in this Code directed, according to the nature of the offence, and on conviction may pass on such European British subject any sentence warranted by law, not exceeding three months' imprisonment, or fine up to one thousand rupees, or both.

75. When the offence complained of is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused person ought to be committed, commit him to the Court of Session.

If the offence complained of is punishable with death or transportation for life, the commitment shall be to the High Court.

76. Sessions Judges or Additional Sessions Judges, but not Assistant Sessions Judges, may pass on European British subjects any sentence warranted by law not exceeding one year's imprisonment, or fine, or both.

If at any stage of the proceedings the Sessions Judge thinks the offence cannot be adequately punished by such a sentence, he shall record his opinion to that effect and transfer the case to the High Court. The Sessions Judge may either himself bind over, or direct the committing Magistrate to bind over the prosecutor and witnesses to appear before such High Court.

77. If the Sessions Judge of the Sessions division within which the offence is ordinarily triable be not a European British subject, the case shall be reported, by the Magistrate, as aforesaid, for the orders of the High Court.

78. Trials of European British subjects before the Court of Session shall be conducted according to the provisions of chapter XIX.

In trials with assessors not less than half the number of assessors, and in trials by jury not less

than half the number of jurors shall be European British subjects.

79. Any European British subject who is convicted by a competent Magistrate of any offence, may appeal either to the Court of Session or to the High Court.

80. Any European British subject who is convicted of any offence by any Court of Session, may appeal to the High Court.

81. Any European British subject who is detained in custody by any person, and who considers such detention unlawful, may apply to the High Court which would have jurisdiction over him in respect of any offence committed by him at the place where he is detained, or to which he would be entitled to appeal from any conviction for any such offence, for an order directing the person detaining him to bring him before the said High Court to abide such further order as may be made by it. The High Court, if it thinks fit, may, before issuing such order, inquire by affidavit, or otherwise, into the grounds on which it is applied for, and grant or refuse such application, or it may issue the order in the first instance, and when the person applying for it is brought before it, it may make such further order in the case as it thinks fit after such inquiry as it thinks necessary.

The High Courts may issue such orders throughout the territories over which they have jurisdiction and over such other places as the Governor General in Council may direct.

82. The High Courts shall issue no writ of *habeas corpus*, *mainprise*, *de homine replegiando*, nor any other writ of the like nature beyond the Presidency towns.

83. When any person claims to be dealt with as a European British subject, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purposes of the inquiry or trial, and such Magistrate shall on such statement decide whether he is or is not a European British subject, and shall deal with him accordingly, and if any such person is dissatisfied with such decision, the burden of proving that it was wrong shall be upon him. If the Magistrate decide that the accused person is not a European British subject, the trial shall proceed, but such decision shall form a ground of appeal.

84. If a European British subject does not claim to be dealt with as such before the Magistrate, before whom he is tried or committed, he shall be held to have waived his privilege as such European British subject.

85. If a person who is not a European British subject is dealt with as such and does not object, the proceedings shall be valid.

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ss. 86

86. All High Courts shall deal with proceedings against European British subjects outside of the Presidency towns in the manner in which they are empowered by this Act or by any other law in force for the time being to deal with the proceedings of Magistrates outside the Presidency towns, and not according to the law of England relating to the dealings of the superior Courts in England with the proceedings of Justices of the Peace in England.

The High Courts shall have the same powers with respect to the inquiries and charges against European British subjects as Courts of Session have with respect to inquiries and charges against other persons.

87. All Magistrates and Courts of Session proceeding against European British subjects under this chapter, shall proceed under the provisions of this Act and not according to the law of England relating to Justices of the Peace, and all the provisions of this Act, not inconsistent with the provisions of this chapter, shall apply to such proceedings.

88. European British subjects sentenced to imprisonment shall be confined in such places as the Local Government may either specially or generally appoint.

PART III.

OF THE POLICE.

CHAPTER VIII.

OFFENCES OF WHICH INFORMATION MUST BE GIVEN TO THE POLICE, AND DUTY OF THE PUBLIC.

89. Every person aware of the commission of any offence made punishable under sections one hundred and twenty-one, one hundred and twenty-two, one hundred and twenty-three, one hundred and twenty-four, one hundred and twenty-five, one hundred and twenty-six, one hundred and thirty, three hundred and two, three hundred and three, three hundred and four, three hundred and eighty-two, three hundred and ninety-two, three hundred and ninety-three, three hundred and ninety-four, three hundred and ninety-five, three hundred and ninety-six, three hundred and ninety-seven, three hundred and ninety-eight, three hundred and ninety-nine, four hundred and two, four hundred and thirty-five, four hundred and thirty-six, four hundred and forty-nine, four hundred and fifty, four hundred and fifty-six, four hundred and fifty-seven, four hundred and fifty-eight, four hundred and fifty-nine or four hundred and sixty of the Indian Penal Code, shall in the absence of reasonable excuse, the burthen of proving which shall lie upon such person, give information of the same to the nearest Police officer or Magistrate.

90. Every Village Headman, Village Watchman, owner or occupier of land, and every Native officer employed in the collection of revenue or rent of land on the

part of Government or the Court of Wards, is bound forthwith to communicate to the nearest Magistrate, or to the officer in charge of the nearest Police-station, any information which he may obtain respecting—

(a) the residence of any notorious receiver or vendor of stolen property at the village of which he is headman or watchman, or in which he owns or occupies land, or collects rent or revenue, as the case may be;

(b) the resort to any place within the limits of such village of any person or persons known or reasonably suspected of being a thug or robber;

(c) the commission or intention to commit suttee or other non-bailable offence at or near such village;

(d) the occurrence of any sudden or unnatural death.

91. Every person is bound to assist a Magistrate or Police officer demanding his aid in the prevention of a breach of the peace,

or in the suppression of a riot or an affray,

or in the taking of any other person whom such Magistrate or Police officer is authorized to arrest.

CHAPTER IX.

OF ARREST WITHOUT WARRANT.

92. A Police officer may, without orders from a Magistrate and without a warrant, arrest,—

FIRST.—Any person who in the sight of such Police officer commits a cognizable offence.

SECONDLY.—Any person against whom a reasonable complaint has been made or a reasonable suspicion exists of his having been concerned in any such offence.

THIRDLY.—Any person against whom a hue and cry has been raised of his having been concerned in any such offence.

FOURTHLY.—Any person who has been proclaimed either under this Act, or in a District or Police Gazette, or notification.

FIFTHLY.—Any person found with property in his possession which may reasonably be suspected to be stolen property.

SIXTHLY.—Any person who obstructs a Police officer while in the execution of his duty, or who escapes from lawful custody, and

SEVENTHLY.—Any person reasonably suspected of being a deserter from Her Majesty's Army or Her Majesty's Indian Army.

93. Any person known or suspected to have committed an offence for which a Police officer is not authorized to arrest without a warrant, and who refuses on demand of a Police officer to give his name and residence,

or gives a name or residence which there is reason to believe to be false,

may be detained by such Police officer for the purpose of ascertaining the name or residence of such person and with a view to future proceedings.

Part III, C.
IX, ss. 94—
108.

94. An officer in charge of a Police-station may, without orders from a Magistrate and without a warrant, arrest or cause to be arrested any person found lurking within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself, or any person who is a reputed robber, house-breaker, thief, receiver of stolen property knowing it to be stolen, or who is of notoriously bad livelihood.

95. Every Police officer shall prevent, and may interpose for the purpose of preventing, the commission of any cognizable offence.

96. Every Police officer receiving information of a design to commit any such offence, shall communicate such information to the Police officer to whom he is subordinate, and to any other officer whom it may concern to prevent or take cognizance of the commission of any such offence.

97. A Police officer knowing of a design to commit any such offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if the commission of the offence cannot be otherwise prevented.

98. A Police officer may, of his own authority, interpose for the prevention of any injury attempted to be committed in his view to any public property/moveable or immovable,

or to prevent the removal or injury of any public land-mark, or buoy or other mark used for navigation. If necessary such Police officer may detain the person doing such injury according to the provisions of section ninety-three

99. If there is reason to believe that any person liable to arrest under this chapter without a warrant, of whom a Police officer is in search, has entered into, or is within any house or place, it shall be the duty of the person residing in or in charge of such house or place, on the demand of such Police officer, to allow ingress thereto, and all reasonable facilities for a search therein.

100. If ingress to such house or place cannot be obtained under section ninety-nine, the Police officer authorized to make the arrest shall take such precautions as may be necessary to prevent the escape of the person to be arrested and send immediate information to any Magistrate having jurisdiction.

If no warrant can be obtained without affording such person an opportunity of escape, and there is no person authorized to enter without a warrant on the spot, the Police officer may make an entry into such house or place and search therein.

101. A Police officer making an arrest under this chapter shall, without unnecessary delay, take or send the person arrested before the Magistrate having jurisdiction in the case, or before the officer in charge of a Police-station.

102. When any officer in charge of a Police-station requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested by such officer without a warrant, he shall deliver to the Police officer required to make the arrest, an order in writing, specifying the person to be arrested, and the offence for which the arrest is to be made.

The provisions of sections ninety-one and one hundred and seventy-six to one hundred and eighty-two (inclusive) shall apply to every order in writing issued under this section.

103. For the purpose of arresting any person accused of a cognizable offence, a Police officer may pursue any such person into the limits of another Police officer whether subordinate to the same Magistrate as himself, or to the Magistrate of any other District, and whether such place be in the same Province or not.

104. Any person attending a Criminal Court, although not upon an arrest or summons on a charge made, may be detained by such Court for the purpose of examination, for any offence which from the evidence he may appear to have committed, and may be proceeded against as though he had been arrested or summoned on a complaint made.

OF ARREST BY PRIVATE PERSONS.

105. Any private person may arrest any person who, in his view, commits a non-bailable and cognizable offence.

106. The master or mate of a British merchant ship may, either with or without the assistance of the Police, who are bound to aid if so required by such master or mate, arrest seamen or apprentices duly engaged, under the Statute 17 & 18 Vic., c. 104, or other law for the time being in force, who refuse to join or desert from the vessel in which they contracted to serve.

Such arrest shall only be made at the request and on the responsibility of such master or mate, who shall be required by the Police to accompany the arrested person, should he be apprehended, before the Magistrate having jurisdiction.

107. A private person making an arrest under this chapter shall forthwith make over the person to a Police officer, and in absence of a Police officer shall take such person to the nearest Police-station. The Police shall deal with such person according to the provisions of section ninety-two or ninety-three, as the case may be, and shall not arrest or detain him unless he appears to be liable to arrest or detention under the section applicable.

108. When any offence is committed in the presence of a Magistrate, he may order any person to arrest the offender, and may thereupon commit him to custody, or, if the offence is bailable, may admit him to bail.

Part III,
C. X, ss.
109—121

CHAPTER X.

POWERS OF THE POLICE TO INVESTIGATE.

- 109.** An officer in charge of a Police-station may, without order of a Magistrate, investigate any offence cognizable by the Police.
- What offences Police officer may investigate.
- 110.** A Police officer may not investigate an offence not cognizable by the Police without the order of a Magistrate of the 1st or 2nd class.
- What offences Police may not investigate.
- 111.** Nothing in section one hundred and ten shall be held to interfere with the exercise of any powers vested in a Police officer by any special or local law, or with the performance of any duty which is imposed upon a Police officer by any such special or local law.
- Saving of powers vested in Police by special or local law.
- 112.** Every complaint preferred to an officer in charge of a Police-station shall be reduced into writing, and shall be signed, sealed, or marked by the person making it; and the substance thereof shall be entered in a book to be kept by such officer in the form prescribed by the Local Government.
- Complaint to Police to be in writing.
- 113.** If a complaint is preferred to an officer in charge of a Police-station of the commission within his local jurisdiction of an offence which is not cognizable by the Police, the Police officer shall enter the substance of it in the station diary, and shall refer the complainant to the Magistrate.
- Complaint in non-cognizable cases.
- 114.** If, from information or otherwise, an officer in charge of a Police-station has reason to suspect the commission within his local jurisdiction of an offence cognizable by the Police, he shall send immediate intimation to the Magistrate having jurisdiction, and shall proceed in person or shall depute one of his subordinate officers to proceed to the spot to investigate the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and apprehension of the offender.
- Upon information, &c., Police officer in charge of station to proceed in person or depute a subordinate.
- Police officers shall investigate offences committed within the local limits of their jurisdiction, but they may investigate offences committed outside of those limits in cases in which a Magistrate might, under the provisions of chapter VI, inquire into an offence not committed within his district.
- No such proceeding shall at any stage be called in question on the ground that such offence was not committed within such officer's local jurisdiction.
- 115.** Such Magistrate, on receiving intimation of the commission of any such offence, may at once proceed, or depute any Magistrate subordinate to him, to proceed to hold a preliminary inquiry into or otherwise to dispose of such case in the manner provided in this Act.
- Preliminary inquiry.
- 116.** Provided that, when any complaint is made against any person by name and the case is not of a serious nature, the officer in charge of a Police-station need not proceed in

person or depute a subordinate officer to make an investigation on the spot, unless such local investigation appears to be necessary.

- 117.** Provided that, if it appear to the officer in charge of a Police-station that there is no sufficient ground for entering on an investigation or that the immediate apprehension of the accused is not necessary for the ends of justice, he shall not proceed in the case, but shall report the substance of the complaint or information for the orders of the Magistrate having jurisdiction. Such report shall be submitted through such superior officer of Police as the Local Government shall, by general or special order, in that behalf appoint. Such superior officer may give such instructions to the officer in charge of the Police-station as he deems fit, and, after recording them on such report, shall transmit the papers without delay to the Magistrate having jurisdiction.
- Where Police officer in charge sees no sufficient ground for investigation.
- 118.** An officer in charge of a Police-station or other officer making an investigation may, by an order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the statement of the complainant or otherwise, appears to be acquainted with the circumstances of any case which he is investigating, and such person shall attend as required and shall answer all questions relating to such case put to him by such officer:

Provided that no person shall be bound to answer any questions tending to criminate himself.

Police officer's power to summon witnesses.

- 119.** An officer in charge of a Police-station, or other Police officer making an investigation, may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.
- Oral examination of witnesses by Police.

Such person shall be bound to answer all questions relating to such case put him by such officer other than questions criminating himself.

No statement so reduced into writing shall be signed by the person making it, nor shall it be treated as part of the record or used as evidence.

Proviso.

- 120.** No Police officer or other person shall offer any inducement to an accused person by threat or promise or otherwise to make any disclosure or confession, whether such person be under arrest or not.
- No inducement to be offered to confess.

But no Police officer or other person shall prevent the person arrested, by any caution or otherwise, from making any disclosure which he may be disposed to make of his own free will.

- 121.** No Police officer shall record any statement or any admission or confession of guilt, which may be made before him by a person accused of any offence:
- Police not to record statement or confession.

Provided that nothing in this section shall preclude a Police officer from reducing any such statement or admission or confession into writing for his own information or guidance.

Proviso.

Part III,
C. X, ss.
122—180.

122. Any Magistrate may record any statement made to him by any person, or any confession made to him by any person, accused of an offence by any Police officer or other person. Such statements shall be recorded in the manner hereinafter prescribed for recording evidence, and such confessions shall be taken in the manner provided in sections three hundred and forty-five and three hundred and forty-six, and shall, when recorded, be forwarded to the Magistrate by whom the case is tried or inquired into. No Magistrate shall record any such confession unless, upon inquiry, he has reason to believe that it was made voluntarily, and he shall make a memorandum at the foot of any such confession to the following effect:—

“Upon inquiry I believe that this confession was voluntarily made.”

(Signed) A. B.,
Magistrate.

123. If the person arrested appears from the information obtained to have committed the offence charged, and the offence is not bailable, the officer in charge of the Police-station shall forward him under custody to the Magistrate having jurisdiction and shall bind over the complainants, if any, and all persons who appear to be acquainted with the circumstances of the case, to appear on a fixed day before such Magistrate, and to remain in attendance till otherwise directed.

When any subordinate Police officer has made any investigation under this chapter, he shall, if so required by the officer in charge of the Police-station, submit a report of such investigation to him, or he may do so without such requisition, and the officer in charge of the Police-station shall then proceed as if he had made the investigation himself.

124. No Police officer shall detain an accused person in custody for a longer period than, under all the circumstances of the case, is reasonable; and such period shall not, in the absence of the special order of a Magistrate, exceed twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

If the investigation has not been completed within twenty-four hours and no such special order has been passed, and if there are grounds for believing that the accusation is well founded, the officer in charge of the Police-station shall forward the accused person to the Magistrate having jurisdiction, with a statement of the offence for which he has been arrested.

A Magistrate authorizing detention under this section shall record his reasons for so doing.

If such order be given by a Magistrate other than the Magistrate of the District or of a division of a District, he shall forward a copy of his order with his reasons for making it to the Magistrate to whom he is subordinate.

125. If it appears to the officer in charge of the Police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the transmission of the accused person to the Magistrate, such officer shall release

the accused person on bail, or on his own recognizance, to appear when required, and shall submit a report of the case for the orders of the Magistrate having jurisdiction. Such report shall be submitted through the superior officer of Police, mentioned in section one hundred and seventeen, who may, pending the orders of the Magistrate, give instructions as to the conduct of the investigation.

126. A Police officer making an investigation under this chapter, shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the complaint or other information reached him, the time at which he began and closed his inquiry, the place or places visited by him, and a statement of the circumstances ascertained by his inquiry.

Any Criminal Court may send for the Police diaries of a case under inquiry or trial in such Court, and may use such diaries to aid it in such inquiry or trial. The prisoner and his agents shall not be entitled to call for them, nor shall he or they be entitled to see them merely because they are referred to by the Court; but if they are used by the Police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such Police officer, the provisions of the law relating to documents used for such purposes shall apply to them.

127. The investigation shall be completed without unnecessary delay, and, as soon as it is completed, the Police officer making the same shall forward to the Magistrate having jurisdiction a report in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the complaint, and the names of the persons who appear to be acquainted with the circumstances of the case and shall also send to such Magistrate any weapon or article which it may be necessary to produce before him.

The Police officer shall state whether the accused person has been forwarded in custody, or has been released on bail or on his own recognizance.

If the accused person be detained in custody, the Police officer shall state the fact and the cause of his detention.

128. A person accused of any non-bailable offence shall not be admitted to bail, if there appear reasonable ground for believing that he has been guilty of the offence imputed to him.

But a person accused of any bailable offence shall be admitted to bail, if sufficient bail be tendered for appearance before the Magistrate having jurisdiction in respect of the offence.

129. The bail to be taken under section one hundred and twenty-eight shall not be excessive; and the surety or sureties shall bind himself or themselves under a specific penalty to produce the accused person before the Magistrate on or before a fixed day, and from day to day, until otherwise directed, to answer the complaint.

130. Every complainant and other person acquainted with the facts and circumstances of the case whose attendance before the Magistrate having jurisdiction is deemed necessary

by the Police officer making the investigation, shall execute a recognizance in the Form (F) given in the second schedule hereto, or to the like effect, for appearance before the Magistrate having jurisdiction in respect of the offence on a fixed day.

If the Court of the Magistrate of the District or of a Magistrate of a division of a District be inserted in the bond, it shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided notice be given to such complainant or witness.

Such day shall be the day whereon the accused person is to appear, if he has been admitted to bail, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

The officer in whose presence the recognizance is executed shall, after delivering to the complainant or one of the witnesses a duplicate thereof, send it with his report to such Magistrate.

No Police officer shall, except as provided in the next following section, accompany the prosecutor or witnesses on his or their way to the Court of the Magistrate.

131. A Police officer shall not subject any complainant or witness to restraint or unnecessary inconvenience, nor require him to give any other security for his appearance than his own recognizance.

But if any complainant or witness refuses to attend, or to execute the recognizance directed in section one hundred and thirty, the officer in charge of a Police-station may forward him under custody to the Magistrate having jurisdiction, who may detain him in custody until he executes such recognizance, or until the hearing.

132. Officers in charge of Police-stations shall report to the Magistrate of the District, or the Magistrate of a division of a District, the cases of all persons apprehended within the limits of their respective stations, or detained under section ninety-three, whether such persons have been admitted to bail or otherwise, under whatever law such persons may have been arrested.

No person who has been apprehended by a Police officer shall be discharged, except on bail or on his own recognizance, or under the special order of a Magistrate.

133. The officer in charge of a Police-station, on receiving notice or information of the unnatural or sudden death of any person, shall immediately give intimation thereof to the nearest Magistrate duly authorized, and proceed to the place where the body of such deceased person is, and there in the presence of two or more respectable inhabitants of the neighbourhood, shall make investigation, and report the apparent cause of death, describing any mark of violence which may be found on the body, and stating in what manner or by what weapon or instrument such mark appears to have been inflicted.

The report shall be signed by such Police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the Magistrate of the District or to the Magistrate of a division of a District.

When there is any doubt regarding the cause of death, the Police officer shall forward the body, with a view to its being examined, to the nearest Civil Surgeon or other medical officer appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of putrefaction on the road.

In the Presidencies of Madras and Bombay, the Head of the village may also in like manner make the investigation and report to the nearest Magistrate authorized to entertain complaints.

134. An officer in charge of a Police-station may, by an order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of such death. Any person so summoned shall be bound to attend and to answer all questions (other than questions which would criminate him).

If the facts do not disclose a cognizable offence to which section one hundred and twenty-seven is applicable, such persons shall not be required by the Police officer to attend a Magistrate's Court.

135. The nearest Magistrate duly authorized may hold an inquiry into the cause of any such death either instead of or in addition to the investigation held by the Police officer, and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence, although no specific charge has been made against any person. The Magistrate holding such an inquiry shall record the evidence taken upon it in any of the manners hereinafter prescribed, according to the circumstances of the case.

136. The powers to be exercised by an officer in charge of a Police-station under this chapter shall be exercised, in the event of his absence from the station-house or illness, by the Police officer next in rank present at the Police-station, above the rank of a constable.

137. Officers of Police superior in rank to officers in charge of a Police-station may exercise the same powers throughout their local jurisdictions as may be exercised by officers in charge of stations within the limits of such stations.

138. For the purposes of this Act, an Assistant District Superintendent of Police may exercise any of the powers of a District Superintendent of Police subject to the control of such District Superintendent of Police, or, in absence of the District Superintendent of Police and the Assistant District Superintendent, the senior officer of Police on the spot may be directed by the Magistrate of the District to exercise the powers of a District Superintendent of Police.

Part IV,
C. XI, ss.
139—150.

PART IV.

OF PROCEEDINGS TO COMPEL APPEARANCE.

CHAPTER XI.

OF COMPLAINTS TO A MAGISTRATE.

139. Proceedings to compel the appearance before a Magistrate of persons accused or suspected of offences, who have not been arrested without warrant, may be by summons or by warrant.

When summons or warrant may be issued. 140. A summons or a warrant may be issued—

- (a.) Upon information or report by a Police officer.
- (b.) Upon a complaint by a private person.
- (c.) Upon suspicion entertained by a Magistrate that an offence has been committed.

Who may entertain complaints. 141. The Magistrate of the District, any Magistrate of a division of a District, or any Magistrate duly empowered in that behalf in any case which he is competent to try or to commit for trial,

may entertain a complaint of an offence whether preferred directly by the complainant, or on report of a Police officer, and may issue process in the manner hereinafter prescribed to compel the appearance of persons accused of such offences.

142. The Magistrate of the District,

Who may act without complaint. any Magistrate of a division of a District,

or any Magistrate duly empowered in that behalf, may, without any complaint, take cognizance of any offence which he suspects to have been committed, and may issue process in the manner hereinafter prescribed to compel the appearance before him of persons whom he suspects to have committed any such offence.

Nothing in this or in the last preceding section shall be held to authorize a Magistrate to entertain a complaint of an offence without sanction where such offence, by any law in force, may not be entertained without sanction.

Who may commit for trial. 143. The Magistrate of the District,

any Magistrate of a division of a District, any Magistrate of the 1st class, or, any Magistrate duly empowered in that behalf, may commit any person to the Sessions for any offence triable by such Court.

144. When, in order to the issuing of a summons or a warrant against any person for any offence, a complaint is made to a Magistrate, such Magistrate, if he is competent to receive such complaint, shall examine the complainant.

The examination shall be reduced into writing in a summary manner and signed by the complainant, and also by the Magistrate.

145. If the Magistrate be not competent to receive the complaint, he shall refer the complainant to a Magistrate having jurisdiction.

Procedure by Magistrate not empowered to hear complaint.

146. If the Magistrate sees cause to distrust the truth of a complaint, he may postpone the issuing of process for compelling the attendance of the person complained against, and direct a previous inquiry or investigation to be made into the truth of the complaint, either by means of any officer subordinate to such Magistrate, or of a local Police officer, or in such other mode as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

If such inquiry or investigation is made by means of some person other than an officer exercising any of the powers of a Magistrate or a Police officer, such person shall exercise all the powers conferred by this Act on an officer in charge of a Police station, except that he shall have no power to make an arrest.

147. The Magistrate before whom such complaint is duly made may, in his judgment there is no sufficient ground for proceeding, dismiss the complaint.

If it appears to such Magistrate that there is sufficient ground for proceeding, he shall, if the case appears to be a summons case, issue his summons, or, if the case appears to be a warrant case, his warrant, for causing the person accused to appear before himself or some other Magistrate having jurisdiction.

148. When a complaint is made before a Magistrate having jurisdiction in the case, that any person has committed, or is suspected of having committed, any offence triable by such Magistrate and punishable with fine only or with imprisonment for a period not exceeding six months, or both, the Magistrate may issue his summons directed to such person requiring him to appear at a certain time and place before such Magistrate to answer to the complaint.

If the Magistrate believes that the accused person is about to abscond, he may, instead of issuing a summons, issue a warrant in the first instance for the arrest of such person.

149. When a complaint is made before a Magistrate having jurisdiction in the case, that any person has committed, or is suspected of having committed, any offence triable by such Magistrate and punishable with imprisonment for a period exceeding six months,

or when a complaint is made before any Magistrate empowered to commit persons for trial before the Court of Session that any person has committed, or is suspected of having committed, any offence triable exclusively by the Court of Session, or which in the opinion of such Magistrate ought to be tried by the Court of Session,

such Magistrate may issue his warrant to arrest such person, or, if he thinks fit, his summons requiring him to appear to answer such complaints.

150. If the person served with a summons does not appear before the Magistrate at the time mentioned in such summons, and the Magistrate is satisfied that such summons was duly served in what the Magistrate deems a reasonable time before the time therein appointed for appearing to the same,

Warrant to arrest if summons not obeyed.

17, XIII, 163. or if it appears to the Magistrate that, after due diligence, the summons could not be served according to the provisions of this Act,

the Magistrate may issue his warrant to apprehend the accused person.

151. In cases, of whatever nature, in which the Magistrate may dispense with personal attendance of accused. Magistrate thinks fit to issue a summons the Magistrate may, if he sees sufficient cause, dispense with the personal attendance of the accused person and permit him to appear by an agent duly authorized to act in his behalf.

But it shall be in the discretion of the Magistrate at any stage of the proceedings to direct the personal attendance of the accused person.

CHAPTER XII.

OF THE SUMMONS.

152. Every summons issued by a Magistrate to an accused person shall be in writing (in duplicate) and shall be signed and sealed by such Magistrate, and shall be in the Form (A) given in the second schedule to this Act, or to the like effect.

153. A summons shall ordinarily be served through a Police officer; but the Magistrate issuing the summons may, if he see fit, direct it to be served by any other person.

154. The summons shall be served on the accused personally, in any district where he may be, by exhibiting one of the copies and delivering or tendering the other copy to him, or, in case the accused person cannot be found, the copy may be left for him with some adult male member of his family residing with him, and the person summoned or the person with whom the copy is left shall sign a receipt therefor.

155. When the accused person cannot be found, and there is no adult male member of his family on whom the service can be made, the serving officer shall fix a copy of the summons on some conspicuous part of the house in which the accused person ordinarily resides.

156. A Magistrate may (notwithstanding the issue of such summons), either before the appearance of the accused person as required by such summons, or after default made by him so to appear, issue a warrant of arrest against such person.

157. The Magistrate of the District, a Magistrate of a division of a District, or a 1st class Magistrate duly authorized in that behalf, may issue a summons or warrant for the apprehension of any person within such District or division of a District in respect of any offence known or suspected to have been committed by such person in a different District or division of a District, or on the high seas, or in a foreign country, and for which, if committed within the jurisdiction of such Magistrate, he might issue a summons or warrant.

158. The provisions relating to a summons and its issue contained in this chapter, shall be applicable to every summons issued under this Act, except summonses to serve as a juror or assessor:

Provided that, when the person summoned is in the service of Government or of any Railway Company, the Court or Magistrate issuing the summons may send the summons to the head of his office in which the person summoned is employed, and such head shall thereupon cause the summons to be served on the person named therein.

CHAPTER XIII.

OF THE WARRANT.

159. Every warrant issued by a Magistrate shall be in writing, and shall be signed and sealed by such Magistrate, and shall be in the Form (B) given in the second schedule to this Act, or to the like effect.

160. It shall be in the discretion of a Magistrate, in issuing a warrant for the arrest of any person to direct by endorsement on the warrant that, if he be willing and ready to give bail in a sum to be fixed by the Magistrate for his appearance before the Magistrate to be named in the warrant on a specified day to answer the complaint, the officer to whom the warrant is directed shall accept such bail, and shall release from custody the person complained against.

If bail is given, the officer shall forward the bail-bond to be forwarded to the Magistrate.

161. A warrant shall ordinarily be directed to a Police officer, but the Magistrate issuing a warrant may, if immediate execution be necessary and no Police officer be immediately available, direct it to any other person.

162. The Magistrate of the District may direct a warrant or warrants to landholders, farmers or managers of land for the arrest of any escaped convict, proclaimed offender, or person who has been accused of a non-bailable offence, but who has eluded pursuit.

Such landholder or other person shall acknowledge the receipt of the warrant and shall be bound to execute it should the person for whose arrest it was issued enter on or be in his estate, farm or charge.

Should the person against whom the warrant is issued be arrested, he shall be made over to the nearest Police officer with the warrant, and such Police officer shall cause such accused person to be carried before the Magistrate having jurisdiction unless bail may be and is taken under section one hundred and sixty.

163. When a warrant is directed to a person other than a Police officer, any other person may aid in executing such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

Part IV,
C. XIII, ss.
164—173.

164. A warrant may be directed to several persons, and when so directed, may be executed by all, or by any one or more of such persons.

165. A warrant directed to a Police officer may also be executed by any other Police officer whose name is endorsed upon the warrant by the officer to whom the warrant is directed or endorsed.

166. The Magistrate by whom a warrant of arrest is issued, may attend personally for the purpose of seeing that the warrant is duly executed.

The Magistrate may also at any time direct the arrest in his presence of any person for whose arrest he is competent to issue a warrant.

167. A warrant issued by a Magistrate shall ordinarily be executed in the district in which it was issued.

But if the person against whom the warrant is issued escapes, goes into, or is in any place out of the district in which the warrant was issued, the warrant may be executed in such place.

168. A Magistrate may direct a warrant to be executed outside his local jurisdiction either after endorsement by a Magistrate within whose local jurisdiction it is to be executed or without such endorsement.

If the warrant is to be endorsed it may be sent by post to the Magistrate within whose local jurisdiction it is to be executed and by whom it is to be endorsed.

If the warrant is not to be endorsed, it shall be entrusted to a Police officer, to be taken either to the Magistrate or to a Police officer (not below the rank of an officer in charge of a station) in whose local jurisdiction the warrant is to be executed.

169. If a warrant be executed, whether with or without endorsement, outside the district in which it was issued, the person arrested shall, unless the Magistrate who issued the warrant be within twenty miles or be nearer than the Magistrate in whose local jurisdiction the arrest was made, or unless bail be taken under section one hundred and sixty, be carried before the Magistrate in whose local jurisdiction the arrest was made.

170. A Magistrate or Police officer to whom a warrant is directed for execution shall execute the same or cause it to be executed, and any Magistrate before whom a person is brought under the provisions of section one hundred and sixty-nine shall, if the person apprehended appear to be the person intended by the Magistrate who issued the warrant, direct his removal in custody to the Magistrate who issued the warrant,

or, if the offence be bailable, and he be ready and willing to give bail, shall take bail for his appearance before the Magistrate who issued the warrant, to whom the recognizance or bail-bond shall be forwarded.

In this section the word Magistrate includes a Commissioner of Police and a Magistrate of Police in the Presidency towns.

171. If any person accused of an offence not coming within section one hundred and forty-eight absconds or conceals himself, so that, upon a warrant issued against him, he cannot be found, the Magistrate having jurisdiction shall, if satisfied that he absconds or conceals himself for the purpose of avoiding the service of the warrant, issue a written proclamation, requiring him to appear to answer the complaint within a fixed period not less than thirty days.

The proclamation shall be publicly read in some conspicuous place of the town or village in which the accused person usually resides, and shall be affixed on some conspicuous part of his ordinary place of abode, or on some conspicuous place of such town or village.

A copy of the proclamation shall also be affixed on some conspicuous part of the Magistrate's Court-house.

A statement by the Magistrate to the effect that the proclamation was duly made shall be conclusive evidence of due compliance with the law.

172. The Magistrate of the District may, on a report from the Magistrate who has issued the proclamation, order the attachment of any property, moveable or immoveable, or both, belonging to the person absconding or concealing himself.

Such order shall authorize the attachment of any property within the jurisdiction of the Magistrate by whom it was made, and it shall authorize the attachment of any property without the jurisdiction of the said Magistrate when endorsed by the Magistrate of the District in which such property is situated.

The attachment under this section shall, if the property ordered to be attached be land paying revenue to Government, be made through the Collector of the District in which the land is situate, and, in all other cases, by seizure under the order of the Magistrate of the District, or by the appointment of a manager and receiver, or by an order prohibiting the payment of rent to the absent person, as such Magistrate deems proper.

If the absent person does not appear within the time specified in the proclamation, the property under attachment shall be declared to be at the disposal of Government, but shall not be sold until the expiration of six months, unless it is of a perishable nature, or such Magistrate considers that the sale would be for the benefit of the owner.

173. When any person whose property has been declared to be at the disposal of Government under section one hundred and seventy-two, appears or is found within two years after the attachment of the property, and proves to the satisfaction of the Session or High Court trying him for the offence of which he was accused, or, if not tried in, or committed for trial for that offence to either of those Courts, to the satisfaction of the Magistrate of the District, that he did not abscond or conceal himself for the purpose of evading justice, such property, or, if the same has been sold, the proceeds thereof, shall be restored to him.

ch IV
C. XIII
XII, ss.
—186.

174. On the arrest of a person for whose apprehension a warrant has been issued under the provisions of section one hundred and fifty-seven, in respect of an offence known or suspected to have been committed in another District or division of a District, the Magistrate who issued the warrant shall, unless he is authorized to complete the inquiry himself, send the person arrested to the Magistrate within the limits of whose jurisdiction the offence is known or suspected to have been committed, or take bail for his appearance before such Magistrate, if the offence of which such person is suspected is bailable.

When the Magistrate who issued the warrant cannot satisfy himself as to the Magistrate to whom the person arrested should be sent, the case shall be reported for the orders of the High Court.

175. If the arrest was made under a warrant issued under section one hundred and fifty-seven by a Magistrate other than the Magistrate of the District, such Magistrate shall send the person arrested to the Magistrate of the District, unless the Magistrate in whose jurisdiction the offence is suspected to have been committed issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the Police officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

If the offence of which the person arrested is suspected has been committed in the jurisdiction of another Subordinate Court of the same District, the Magistrate who issued the warrant under section one hundred and fifty-seven shall send the person arrested to the Magistrate of the division of the district in which the offence was committed.

176. A Police officer or other person executing a warrant of arrest, shall notify the substance of the warrant to the person to be arrested, and, if required to do so, shall show the warrant to such person.

177. In making an arrest, the Police officer or other person executing the warrant shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

178. If a person against whom a warrant of arrest is issued forcibly resists the endeavour to arrest him, the Police officer or other person executing the warrant may use all means necessary to effect the arrest.

179. If there is reason to believe that any person against whom a warrant has been issued has entered into, or is within, any house or place, it shall be the duty of any person residing in or in charge of such house or place, on demand of the Police officer or other person executing the warrant, to allow such Police officer or other person free ingress thereto, and to afford all reasonable facilities for a search therein.

180. The Police officer or other person authorized by warrant to arrest a person, may break open any outer or inner door or window of any house or place, whether that of the person accused or of any other person, in order to execute such warrant, if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.

181. If information be received that a person accused of any offence for which a warrant may issue is concealed in an apartment in the actual occupancy of a woman who according to the customs of the country does not appear in public, the Police officer or other person employed to execute the warrant shall take such precautions as may be necessary to prevent the escape of the accused person.

If the accused person does not deliver himself up, the Police officer or other person authorized to execute the warrant may notify his authority and purpose, and demand admittance.

If after such notification and demand he cannot otherwise obtain admittance, he shall give notice to any woman as aforesaid in such apartment, not being a person against whom a warrant has been issued, that she is at liberty to withdraw, and afford her every reasonable facility for withdrawing, and may then break open the apartment and execute the warrant.

182. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

183. The officer or other person executing the warrant shall, without unnecessary delay, bring the person arrested before the Magistrate before whom he is required by this Act to produce him.

184. No Police officer or other person shall offer to the person arrested any inducement, by threat or promise or otherwise, to make any disclosure.

But no Police officer or other person shall prevent the person arrested, by any caution or otherwise, from making any disclosure which he may be disposed to make of his own free will.

185. The provisions relating to a warrant and its execution contained in this chapter, shall be applicable to every warrant of arrest issued under this Act.

PART V.

OF INQUIRIES AND TRIALS.

CHAPTER XIV.

PRELIMINARY.

186. Every person charged before any Criminal Court with an offence may of right be defended by any barrister or attorney of a High Court, or by any pleader duly qualified under the provisions of Act No. XX of 1865, or any other law in force for the time being relating to pleaders.

Part V,
C. XII and
XI, ss. 187
—197.

Any such person may, with the permission of the Court (but not otherwise), employ any mukhtár or other person not being a barrister, attorney, or pleader, to assist him in his defence.

187. The place in which the Court of a Magistrate is held for the trial of any complaint, or for the purpose of conducting any inquiry into any case triable by a Court of Session or the High Court or any Superior Court, and also every Court of Session and every High Court, shall be deemed an open and public Court, to which the public generally may have access, so far as the same can conveniently contain them.

But any such Court may, if it think fit, order that, during the inquiry into or trial of any particular case, no person shall have access to or be or remain in such room or building without the consent or permission of the Court.

188. In the case of offences which may lawfully be compounded, complainants may compound the offence out of Court, or in Court with the permission of the Court.

Such withdrawal from the prosecution shall have the effect of an acquittal of the accused person.

CHAPTER XV.

OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

189. The following procedure shall be adopted in inquiries before Magistrates in cases triable by a Court of Session or High Court.

190. When the accused person appears or is brought before the Magistrate, or, if his personal attendance is dispensed with, when the Magistrate thinks fit, the Magistrate shall take the evidence of the complainant and of such persons as are stated to have any knowledge of the facts which form the subject-matter of the accusation and the attendant circumstances.

191. The complainant and the witnesses for the prosecution shall be examined in the presence of the accused person, or of his agent when his personal attendance is dispensed with and he appears by agent.

The accused person or his agent shall be permitted to examine and re-examine his own witnesses and to cross-examine the complainant and his witnesses.

192. The Magistrate may at any stage of the proceedings summon and examine any person whose evidence he considers essential to the inquiry, and re-call and re-examine any person already examined.

193. The Magistrate may from time to time, at any stage of the inquiry and without previously warning the accused person, examine him, and put such questions to him as he considers necessary.

The accused person shall not render himself liable to punishment for refusal to answer such questions, but the Magistrate shall draw such inference as may to him seem just from such refusal.

EXPLANATION.—The answer given by an accused person may be put in evidence against him, not only in the case under inquiry, but also in trials for any other offences his replies may tend to show he has committed.

194. If from the absence of a witness or from any other reasonable cause, it becomes necessary or advisable to defer the examination, or further examination, of witnesses, the Magistrate may, by a written order, from time to time adjourn the inquiry, and remand the accused person for such time as is deemed reasonable, not exceeding fifteen days:

Provided that, instead of detaining the accused person in custody during the period for which he is so remanded, the Magistrate may discharge him, upon his entering into a recognizance, with or without a surety or sureties, at the discretion of such Magistrate, conditioned for his appearance before the Magistrate at the time and place appointed for the continuance of such examination.

195. When a Magistrate finds that there are not sufficient grounds for committing the accused person to take his trial before the Court of Session or High Court, or for remanding him, he shall discharge him, unless it appears to the Magistrate that such person should be put on his trial before himself, in which case he shall proceed under chapter XVI or XVII of this Act.

EXPLANATION I.—The absence of the complainant, except when the offence may lawfully be compounded, shall not be deemed sufficient ground for a discharge, if there appear other evidence of a nature rendering a trial desirable.

EXPLANATION II.—A discharge is not equivalent to an acquittal, and does not bar the revival of a prosecution for the same offence.

EXPLANATION III.—An order of discharge cannot be made until the evidence of the witnesses named for the prosecution has been taken.

196. When evidence has been given before a Magistrate which appears to justify him in sending the accused person to take his trial for an offence which is triable exclusively by the Court of Session or High Court, or which, in the opinion of the Magistrate, is one which ought to be tried by such Court, the accused person shall be sent for trial by such Magistrate before the Court of Session or High Court as the case may be.

197. If the accused person (not being a European British subject)

has committed an offence conjointly with a European British subject who is about to be committed for trial, or to be tried, before the High Court on a similar charge,

and the evidence appears to justify the Magistrate in sending the accused person for trial,

he shall commit such accused person to take his trial before such High Court and not before a Court of Session, and such High Court shall have jurisdiction to try such person.

198. When the Magistrate determines to send the accused person before the Court of Session or High Court for trial, he shall make a written instrument under his hand and seal, declaring with what offence the accused person is charged, and shall direct him to be tried by such Court on such charge. He shall also record his reasons for committing such accused person.

A copy of such instrument shall be forwarded with the record of the original inquiry to the Court of Session before which the accused person is to be tried, and a copy shall also be sent to the public prosecutor or to the officer appointed to conduct the prosecution.

Any weapon or other article of property necessary to produce in evidence shall also be transmitted.

When a commitment is made to the High Court, such instrument, record, and such weapon or other article shall be forwarded to the Clerk of the Crown or other officer appointed by the Court, and if any part of such record is not in English, a translation thereof in English shall be forwarded therewith.

199. As soon as the charge on which the accused person is to be tried has been prepared, it shall be read and explained to him, and a copy or translation thereof shall be furnished to him, if he so require.

200. The accused person shall be required at once to give in, orally or in writing, a list of witnesses whom he may wish to be summoned to give evidence on his trial before the Court of Session or High Court.

It shall be in the discretion of the Magistrate, subject to the provisions of section three hundred and fifty-nine, to allow the accused person to give in any further list of witnesses at a subsequent time.

201. When the inquiry is concluded, the accused person shall, if he demands them at a reasonable time before the trial, be furnished with copies of the depositions. Such copies shall be made at his expense unless the Magistrate see fit to give them free of cost.

202. When the accused person is committed to take his trial before the Court of Session or High Court, the Magistrate shall issue an order to the public prosecutor, Government Pleader or other person appointed by the Government to conduct prosecutions before the Court of Session or High Court, notifying such commitment, and stating the offence in the same form as the charge.

Nothing in this section shall preclude the Magistrate of the District in a case committed to the Court of Session, if he thinks fit, from appointing a person other than such Government Pleader or officer to conduct the prosecution.

CHAPTER XVI.

OF THE TRIAL OF SUMMONS CASES BY MAGISTRATES.

Procedure in summons cases.

203. The following procedure shall be observed in the trial of summons cases.

204. If upon the day appointed, the accused person appears voluntarily in obedience to the summons in that behalf served upon him, or is brought before the Magistrate by virtue of a warrant or otherwise, it shall be at the discretion of the Magistrate to admit him to bail, or allow him to be at large upon his personal recognizance, as the Magistrate directs.

If the accused person cannot give bail, when required to do so, he shall be committed to custody.

205. If upon the day appointed for the appearance of the accused person, or any day subsequent thereto on which the case may be called on, the complainant does not appear, the Magistrate shall dismiss the complaint, unless for some reason he thinks proper to adjourn the hearing of the same to some other day, upon such terms as he thinks fit.

206. On the appearance of both parties on the day fixed for the trial, the substance of the complaint shall be stated to the accused person, and he shall be asked if he has any cause to show why he should not be convicted.

If the accused person admit the truth of the complaint, and show no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly.

207. If the accused person do not admit the truth of the complaint, the Magistrate shall proceed to hear the complainant and such witnesses as he produces in support of his complaint, and also to hear the accused person and such witnesses as he produces in his defence.

208. Before or during the hearing of any complaint, the Magistrate may adjourn the hearing of the same to a day to be then appointed and stated in the presence and hearing of the party or parties.

If on the day to which such hearing or such further hearing has been so adjourned, the accused person does not appear, the Magistrate may issue his warrant for the arrest of such person.

If the complainant does not appear the Magistrate may dismiss the complaint.

209. A Magistrate may dismiss the complaint as frivolous or vexatious, and may, in his discretion, by his order of dismissal, award that the complainant shall pay to the accused person such compensation, not exceeding fifty rupees, as to such Magistrate seems just and reasonable.

In such cases, if more persons than one are accused, the Magistrate may in like manner award compensation not exceeding fifty rupees to each of them.

The sum so awarded shall be recoverable by distress and sale of the moveable property belonging to the complainant, which may

Part V,
C. XVI
XVIII ss.
210—222.

be found within the jurisdiction of the Magistrate of the District, and such order shall authorize the distress and sale of any moveable property belonging to the complainant without the jurisdiction of the Magistrate of the District when the order has been endorsed by the Magistrate of the District in which such property is situated, and, in default of such distress, by imprisonment of the complainant in the civil jail, for any time not exceeding thirty days, unless such sum is sooner paid.

210. If a complainant at any time before a final order is passed in any case under this chapter satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw it.

A complaint withdrawn under this section shall not again be entertained.

211. If the Magistrate, in any case tried under this chapter, finds the accused person not guilty, he shall record a judgment of acquittal.

If the accused person is convicted, the Magistrate shall pass sentence upon him according to law.

When the personal attendance of the accused person during the trial has been dispensed with, the sentence of the Magistrate, if the sentence be for fine only, may be pronounced in the presence of the agent, if the accused person has been permitted to appear by agent, or the accused person may be required to attend to hear such sentence.

212. The dismissal of a complaint under this chapter shall operate in like manner as the acquittal of the accused person.

CHAPTER XVII.

OF THE TRIAL OF WARRANT CASES BY MAGISTRATES.

213. The following procedure shall be observed by Magistrates in the trial of warrant cases.

214. The provisions of sections one hundred and ninety to one hundred and ninety-four (both inclusive) shall apply to trials conducted under this chapter.

215. When the evidence of the complainant and of the witnesses for the prosecution, and such examination of the accused person as the Magistrate considers necessary, have been taken, the Magistrate, if he finds that no offence has been proved against the accused person, shall discharge him.

EXPLANATION I.—The absence of the complainant, except where the offence may be lawfully compounded, shall not be deemed sufficient ground for a discharge, if there appears other evidence sufficient to substantiate the offence.

EXPLANATION II.—A discharge is not equivalent to an acquittal and does not bar the revival of a prosecution for the same offence.

EXPLANATION III.—An order of discharge cannot be passed until the evidence of the witnesses named for the prosecution has been taken.

216. If the Magistrate finds that an offence is Charge to be drawn apparently proved against the accused person, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall prepare in writing a charge against the accused person.

EXPLANATION I.—The omission to prepare a charge shall not invalidate the trial, if, in the opinion of the Court of appeal or revision, the accused person has not been prejudiced.

EXPLANATION II.—If the Court of appeal or revision thinks that the accused person has been prejudiced by an omission to prepare a charge, it shall order the trial to be recommenced from the point at which the charge should have been drawn up.

217. The charge shall then be read and explained to the accused person, and he shall be asked whether he is guilty or has any defence to make.

218. If the accused person have any defence to make to the charge, he shall be called upon to enter upon the same, and to produce his witnesses if in attendance, and shall be allowed to recall and cross-examine the witnesses for the prosecution.

219. The Magistrate shall, subject to the provisions of section three hundred and sixty-two, summon any witness and examine any evidence that may be offered in behalf of the accused person, to answer or disprove the evidence against him, and may for this purpose, at his discretion, adjourn the trial from time to time, as may be necessary.

220. If the Magistrate finds the accused person not guilty, he shall record judgment of acquittal.

If the accused person is convicted, the Magistrate shall pass sentence upon him according to law.

221. In any trial before a Magistrate, in which it may appear at any stage of the proceedings that from any cause the case is one which the Magistrate is not competent to try, or one which, in the opinion of such Magistrate, ought to be tried by the Court of Session or High Court, the Magistrate shall stop further proceedings under this chapter, and shall commit the prisoner under the provisions hereinbefore contained. If such Magistrate is not empowered to commit he shall proceed under section forty-five.

CHAPTER XVIII.

OF SUMMARY TRIALS.

222. The Magistrate of the District may try the following offences in a summary way, and, on conviction of the offender, may pass such sentence as may be lawfully inflicted under section twenty of this Code:—

(1). Offences referred to in section one hundred and forty-eight of this Code.

(2). Offences relating to weights and measures under sections two hundred and sixty-four, two

hundred and sixty-five, and two hundred and sixty-six of the Indian Penal Code.

(3). Hurt under section three hundred and twenty-three of the Indian Penal Code.

(4). Theft under section three hundred and seventy-nine of the Indian Penal Code, where the property stolen does not exceed fifty rupees in value.

(5). Theft under section three hundred and eighty of the Indian Penal Code, where the property stolen does not exceed fifty rupees in value.

(6). Theft under section three hundred and eighty-one of the Indian Penal Code, where the property stolen does not exceed fifty rupees in value.

(7). Receiving stolen property under section four hundred and eleven of the Indian Penal Code.

(8). Mischief under section four hundred and twenty-seven of the Indian Penal Code.

(9). House-trespass under section four hundred and forty-eight of the Indian Penal Code.

(10). Criminal intimidation under sections five hundred and four and five hundred and six of the Indian Penal Code.

223. The Local Government may invest any Magistrate of the 1st class with power to try summarily all or any of the offences mentioned in section two hundred and twenty-two.

224. The Local Government may invest any Bench of Magistrates exercising the powers of a Magistrate of the 1st class, with power to try summarily all or any of the offences mentioned in section two hundred and twenty-two.

225. The Local Government may invest any Bench of Magistrates exercising the powers of a Magistrate of the 2nd or 3rd class with power to try summarily all or any of the following offences:—

Offences coming within sections two hundred and seventy-seven, two hundred and seventy-eight, two hundred and seventy-nine, two hundred and eighty-five, two hundred and eighty-six, two hundred and eighty-nine, two hundred and ninety, two hundred and ninety-two, two hundred and ninety-three, two hundred and ninety-four, three hundred and twenty-three, three hundred and thirty-four, three hundred and thirty-six, three hundred and forty-one, three hundred and fifty-two, four hundred and twenty-six, and four hundred and forty-seven of the Indian Penal Code; any offences against Municipal Acts, and the Conservancy Clauses of Police Acts punishable with fine or with imprisonment not exceeding one month.

226. In trials under this chapter the provisions of this Code in regard to summons cases shall be followed in respect of summons cases, and the procedure for warrant cases in respect of warrant cases, with the exceptions hereinafter provided.

227. In cases where no appeal lies, the Magistrate need not record the evidence of the witnesses nor the reasons for passing the judgment, nor draw up a formal charge, but he shall

enter in a register, to be kept for the purpose, the following particulars:—

- (a) The serial number;
- (b) The date of the commission of the offence;
- (c) The date of the report or complaint;
- (d) The name of the complainant;
- (e) The name, parentage and residence of the accused person;
- (f) The offence complained of or proved;
- (g) The prisoner's plea;
- (h) The finding, and, in the case of a conviction, a brief statement of the reasons therefor;
- (i) The sentence; and
- (j) The date on which the proceedings terminated.

228. If a Magistrate or Bench of Magistrates acting under section two hundred and twenty-two passes a sentence of more than three months' imprisonment, or of fine exceeding two hundred rupees;

or if a Bench of Magistrates, acting under section two hundred and twenty-five, convicts any person,

such Magistrate or Bench of Magistrates shall, before passing sentence, record a judgment embodying the substance of the evidence on which the conviction was had, and also the particulars mentioned in section two hundred and twenty-seven.

Such judgment shall be the only record in cases coming within this section.

229. Records made under section two hundred and twenty-seven and judgments recorded under the provisions of section two hundred and twenty-eight shall be written by the presiding officer, either in English or in the language of the district in which the trial was held, or, by direction of the Court to which such presiding officer is immediately subordinate, in the language of the presiding officer.

230. The Local Government may authorize any Bench of Magistrates to prepare the aforesaid record or judgment by means of an officer of such Court, and the record or judgment so prepared shall be signed by each member of the Bench present conducting the proceedings.

CHAPTER XIX.

TRIAL BY COURT OF SESSION.

231. Except in the cases referred to in section four hundred and seventy-two, no Court of Session shall take cognizance of any offence as a Court of original criminal jurisdiction, unless the accused person has been committed by a Magistrate duly empowered in that behalf.

232. All trials before the Court of Session shall be either by jury, or conducted with the aid of two or more assessors.

233. The Local Government may order that the trial of all offences, or of any particular class of offences, before any Court of Session shall be by jury in

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any District, and such Local Government may from time to time revoke or alter such order.

Orders passed under this section shall be published in the official Gazette, and in such other manner as the Local Government from time to time directs.

EXPLANATION.—If an offence triable with assessors is tried by a jury, the trial shall not be invalid. If an offence triable by a jury is tried with assessors, the trial shall not be invalid, unless objection be taken before the Court records its finding.

234. Criminal trials before the Court of Session for trial of in which a European (not Europeans or Americans, being a European British subject) or an American is the accused person, or one of the accused persons, shall be by jury.

In such case the jury, if such European or American desire it, shall consist of at least one-half of Europeans (whether European British subjects or not) or Americans, if such a jury can be procured:

Provided that, in any District in which the Local Election to be tried Government has not ordered without jury, that all trials, or trials for all

offences of the class within which the trial about to take place falls, shall be by jury, such European or American may elect to be tried without jury.

235. In every trial before a Court of Session, the prosecution shall be conducted by the Public Prosecutor, Government Pleader or by some other officer specially empowered by the Magistrate of the District in that behalf.

236. In trials by jury before the Court of Session, the jury shall consist of such uneven number, not being less than three nor more than nine, as the Local Government, by any general order applicable to any particular District or to any particular classes of offences in that District, directs.

237. When the Court is ready to commence the trial, the accused person shall be brought before it, and the charge shall be read and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

If the accused person pleads guilty, the plea shall be recorded, and he may be convicted thereon.

238. If the accused person refuses to plead, or claims to be tried, the Court shall proceed to choose jurors or assessors as hereinafter directed, and to try the case.

239. When the trial is to be with assessors, the assessors shall be chosen, as the Judge thinks fit, from the persons summoned to act as assessors.

240. When the trial is to be by jury, the jury shall be chosen by lot from the persons summoned to act as jurors.

241. In a trial by jury before the Court of Session of a person not being a European or an American, at least one-half of the jury, if the accused person desire it, shall consist of persons who are neither Europeans nor Americans.

242. In any case before the Court of Session, in which a European or American is charged jointly with a person of any other race, such other person shall, if he desire it, be tried separately if the European or American claims to be tried by a jury consisting of at least one-half of Europeans and Americans.

243. As each juror is chosen, his name shall be called aloud, and, upon his appearance, the accused person shall be asked if he objects to be tried by such juror.

Objection may then be made to such juror by the accused person or by the Public Prosecutor, Government Pleader, or other person appointed to conduct the prosecution, and the grounds of objection shall be stated.

Any objection made to a juror shall be decided by the Court, and the decision of the Court shall be final.

If an objection be allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons, or, if there be no such juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury, provided no objection to such juror or other person be made and allowed.

244. Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed:—

(1) any ground of disqualification within section four hundred and five;

(2) standing in the relation of husband, master or servant, landlord or tenant, to the person alleged to be injured or attempted to be injured by the offence charged, or to the person on whose complaint the prosecution was instituted, or to the person accused;

(3) being in the employment of either of such persons;

(4) being plaintiff or defendant against either of such persons in any civil suit;

(5) having complained against, or having been accused by, either of such persons in any criminal prosecution;

(6) any circumstance which, in the judgment of the Court, is likely to cause prejudice against, or favour to, either of such persons, or which renders such person improper as a juror.

245. The Judge shall not allow any person to serve on the jury, unless such person understands the language in which the evidence is given or interpreted.

246. When the jury has been completed, they shall appoint one of their number to be foreman.

It shall be the duty of the foreman to preside in the debates of the jury, to deliver the verdict of the jury, or to ask any information from the Court that may be required by the jury.

If a majority do not agree in the appointment of a foreman, he shall be named by the Court.

247. The witnesses shall then be examined, cross-examined and re-examined according to the law for the time being relating to the examination of witnesses.

248. The examination of the accused person before the committing Magistrate shall be given in evidence at the trial.

249. When a witness is produced before the Court of Session, or High Court, the evidence given by him before the committing Magistrate may be referred to by the Court, and the Court may, if it think fit, ground its judgment thereon, although the witnesses may at the trial make statements inconsistent therewith.

EXPLANATION.—This section shall not authorize the Court to refer to the record of the evidence given by a witness who is absent except in the cases in which such evidence may be referred to under the Indian Evidence Act or other law in force for the time being upon the subject of evidence.

250. The Court may from time to time at any stage of the trial, examine the accused person, and shall question him generally on the case after the witnesses for the prosecution have been examined, and before he is called on for his defence.

251. When the examination of the witnesses for the prosecution and the examination of the accused person is concluded, the accused person shall be asked whether he means to call witnesses. If he says that he does not, the prosecutor may sum up his case. The Court may then, if it thinks that there are no grounds for proceeding,

in a case tried with assessors, record a finding, or, in a case tried by a jury, instruct the jury to return a verdict of acquittal.

If the Court consider that there are grounds for proceeding, it shall call on the accused person to state his grounds of defence and produce his witnesses.

The accused person or his Counsel or Agent may then state the case for the defence, and may examine the witnesses, if any, produced for the defence, and at the conclusion of such examination may sum up his case.

252. If any evidence is adduced on behalf of the accused person, the officer conducting the prosecution shall be entitled to reply.

253. Whenever, in the opinion of the Court, it is proper and convenient that the jury or assessors should view the place in which the offence charged is said to have been committed, or any other place in which any other transaction material to the inquiry in the trial took place, an order shall be made to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to the place which shall be shown to them by a person appointed by the Court.

Such officer shall not suffer any other person to speak to, or hold any communication with, any of the jury or assessors, and they shall, when the

view is finished, be immediately conducted back into Court.

254. If, in the course of a trial by jury at any time prior to the finding, any juror, from any sufficient cause, is prevented from attending through the trial,

or if any juror absents himself, and it is not possible to enforce his attendance,

a new juror shall be added, or the jury shall be discharged, and a new jury empanelled, and in either case the trial shall commence anew.

255. When the case for the defence and the prosecutor's reply, if any, are concluded, the Court shall proceed—

in cases tried with assessors, to ask the assessors their opinion, and shall record it:

in cases tried by jury, to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

A statement of the Judge's direction to the jury shall form part of the record.

256. It is the duty of the Judge to decide all questions of law, and especially all questions as to the relevancy of facts which it is proposed to prove, the admissibility of evidence or the propriety of questions asked by parties or their agents which may arise in the course of the trial; and in his discretion to prevent the production of inadmissible evidence whether it is, or is not objected to by the parties;

to decide upon the meaning and construction of all documents given in evidence at the trial;

to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall be final.

The Judge may, if he thinks proper in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact relevant to the proceeding.

Illustrations.

(a.) It is proposed to prove a statement made by a person not called as a witness under circumstances which render evidence of his statement admissible.

It is for the Judge and not for the jury to decide whether the existence of those circumstances has been proved.

(b.) It is proposed to give secondary evidence of a document, the original of which has been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

257. It is the duty of the jury—

(1) to decide upon all questions of fact submitted to them by the Judge at the trial, being guided in such decision by the statement of the law given to them by the Judge;

(2) to determine the meaning of all technical terms and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not;

(3) to decide all questions declared by the Indian Penal Code, or any other law to be questions of fact;

Parts V & VI, C. XIX & XX, ss. 258—269. (4) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

(a.) A is tried for the murder of B. It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or acquitted.

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(b.) The question is whether a person entertained a reasonable belief on a particular point. Whether work was done with reasonable skill, or due diligence.

Each of these is a question for the jury.

258. If a juryman or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be examined in the same manner as any other witness.

259. If, in the course of a trial with the aid of assessors, at any time prior to the finding, any assessor is, from any sufficient cause, prevented from attending through the trial, the trial shall proceed with the aid of the other assessor or assessors.

If all the assessors are prevented from attending through the trial, the proceedings shall be stayed, and a new trial shall be held with the aid of fresh assessors.

260. If a trial is adjourned, the jury or assessors shall be required to attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

261. In cases tried with assessors, the Court shall proceed to pass judgment of acquittal or conviction, having considered the opinions of the assessors, but not being bound to conform to them. If the accused person is convicted, the Court shall proceed to pass sentence on him according to law.

262. The opinion of each assessor shall be given orally and shall be recorded in writing by the Court, but the decision is vested exclusively in the Judge.

263. In cases tried by jury, the jury may retire to consider their verdict. It shall be the duty of an officer of the Court not to suffer any person to speak to or hold any communication with any member of such jury. When the jury have considered their verdict, the foreman shall inform the Court what is their verdict, or what is the verdict of a majority.

If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

If the Court does not think it necessary to dissent from the verdict of a majority of the

jurors, it shall give judgment accordingly. If the accused person is acquitted, the Court shall record judgment of acquittal. If the accused person is convicted, the Court shall proceed to pass sentence on him according to law. If the Court disagrees with the verdict of the jurors or of a majority of such jurors, and considers it necessary for the ends of justice to do so, it may submit the case to the High Court, and may either remand the prisoner to custody or admit him to bail.

The High Court shall deal with the case so submitted as with an appeal, and if it convicts the accused person, it shall pass such sentence as might have been passed by the Court of Session.

264. The Court may, in its discretion, postpone the hearing of the case, and may from time to time adjourn the trial, if it considers that such adjournment is proper and will promote the ends of justice.

265. The same jury may try, or the same assessors may aid in the trial of, as many accused persons successively as to the Court seems fit.

PART VI.

APPEAL, REFERENCE, AND REVISION.

CHAPTER XX.—APPEALS.

266. Any person convicted on a trial held by any Magistrate of the 2nd or 3rd class, may appeal to the Magistrate of the District or to a Magistrate of the 1st class who has been empowered by the Local Government to hear such appeals.

267. Any person required by a Magistrate of the 1st class to give security for good behaviour under section five hundred and four or section five hundred and five may appeal to the Magistrate of the District.

268. Any person convicted by any Civil, Criminal, or Revenue Court under Chapter XXXII of this Act, may appeal to the Court to which decrees or orders made in such Court are ordinarily appealable, subject to the rules provided in sections two hundred and seventy-five, two hundred and seventy-seven, two hundred and seventy-eight, two hundred and eighty, two hundred and eighty-one and two hundred and eighty-two.

An appeal from such conviction by a Small Cause Court may be made to the Court of Session within whose Sessions Division such Court is situate.

269. Any person convicted on a trial held by the Magistrate of the District or other Magistrate of the 1st class may appeal to the Court of Session.

The appellant shall in every case give notice of appeal to the Magistrate of the District, who shall, if necessary, instruct the Public Prosecutor, Government Pleader or other officer empowered by Government or by the Magistrate to prosecute the case.

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270. Any person convicted on a trial held by any officer invested with the power described in section thirty-six, may appeal to the High Court, if it appear from the sentence awarded that such officer was in such trial exercising such special powers. No appeal in such case shall lie to the Court of Session.

Any person convicted by an Assistant Sessions Judge may appeal to the Sessions Judge if the sentence appealed against does not exceed three years' imprisonment.

A sentence of an Assistant Sessions Judge confirmed, under section eighteen, by the Sessions Judge may be appealed to the High Court.

271. Any person convicted on a trial held by a Sessions Judge may appeal to the High Court.

The appeal may be on a matter of fact as well as on a matter of law.

If the conviction was in a trial by jury, the appeal shall be admissible on a matter of law only.

If the person be sentenced to death, the Session Court shall inquire whether he wishes to appeal, and if the convict signifies his intention to appeal, the Court shall delay the transmission of the reference, hereinafter required, for a reasonable time, not exceeding seven days, to allow of the appeal and reference being made at the same time.

When it appears that the execution of the sentence should not be delayed, the Session Court may record its reasons and forward the reference at once.

In no case requiring confirmation shall the High Court grant a longer delay than is herein allowed, and where the reasons given by the Session Court are sufficient, the High Court shall decide the case in the absence of an appeal.

272. The Local Government may direct an appeal by the Public Prosecutor or other officer specially or generally appointed in this behalf from an original or appellate judgment of acquittal in any case which might have been appealed by the person convicted had a conviction been had; but in no other case shall there be an appeal from a judgment of acquittal passed in any Criminal Court.

Such appeal shall lie to the High Court, and the rules of limitation shall not apply to appeals presented under this section.

The High Court may direct a new trial by another Court, or may pass such judgment, sentence or order as may be warranted by law.

273. There shall be no appeal in cases in which a Court of Session, or the Magistrate of a District or other Magistrate of the 1st class, passes a sentence of imprisonment not exceeding one month, or of fine not exceeding fifty rupees, or of whipping.

There shall be no appeal from a sentence of imprisonment passed by such Court or officer in default of payment of fine when no substantive sentence of imprisonment has been passed.

274. There shall be no appeal in cases tried summarily in which a Magistrate of the District, or a Magistrate or bench of Ma-

gistrates of the 1st class, empowered to act under section two hundred and twenty-two, passes a sentence of imprisonment not exceeding three months, or of fine not exceeding two hundred rupees, or of whipping.

275. Every petition of appeal shall be accompanied by a copy of the judgment or order appealed against.

276. A copy of the judgment or other order passed by any Criminal Court, and, in cases tried by jury, of the Judge's charge to the jury, shall be furnished without delay on the application of any person affected by such sentence or order.

Such copy shall be made at the expense of the person applying for it, unless he is in jail or unless the Court, for some special reason, sees fit to grant such copy free of expense.

277. If the party appealing be in jail, he shall be at liberty to present his petition of appeal and the copy of the judgment or order appealed against to the Magistrate or other officer in charge of the jail, who shall thereupon forward the petition to the proper appellate authority.

278. The Appellate Court shall fix a reasonable time within which the appellant or his counsel or authorized agent may appear, and it may reject the appeal if, on a perusal of the petition of appeal and the copy of the judgment or order appealed against, and after hearing the appellant or his counsel or authorized agent, if he appears, it considers that there is no sufficient ground for questioning the correctness of the decision or for interfering with the sentence or order appealed against.

Before rejecting the appeal, the Court may call for and peruse all or any part of the proceedings of the lower Court, but shall not be bound to do so.

279. If the Appellate Court decide to hear the appeal, it shall cause notice to be given to the appellant, and, if the appeal be to the Session or High Court, shall also give notice to the Magistrate of the District, who shall inform, if necessary, the Public Prosecutor, Government Pleader or other officer empowered by Government on that behalf, of the day on which such appeal will be heard.

280. The Appellate Court, after perusing the proceedings of the lower Court, and after hearing the appellant, his counsel or agent, if they appear, and the Public Prosecutor, Government Pleader or other officer empowered by Government or by the Magistrate of the District in that behalf, if he appears, may alter or reverse the finding and sentence or order of such Court, and may, if it see reason to do so, enhance any punishment that has been awarded.

Provided that if the appeal is from the sentence of a Magistrate of any class the appellate Court shall not inflict a greater punishment than might have been inflicted by a 1st class Magistrate.

281. In any case in which an appeal is allowed, the Appellate Court may, pending the appeal, order that the sentence be suspend-

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ed, and if the appellant be in confinement for an offence which is bailable, may order that he be released on bail.

282. In any case in which an appeal has been allowed, the Appellate Court, if it think further inquiry or additional evidence upon any point bearing upon the guilt or innocence of the appellant to be necessary, may either make such further inquiry and take such additional evidence itself or may direct such inquiry to be made and additional evidence to be taken.

When the evidence has not been taken before itself, the result of the further inquiry and the additional evidence shall be certified to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

Unless the Appellate Court otherwise directs, the presence of the appellant may be dispensed with when the further inquiry is made or evidence taken.

The provisions of this Act relating to summoning and enforcing the attendance of witnesses and their examination shall, so far as may be, apply to witnesses examined under this section.

283. No finding or sentence passed by a Court of competent jurisdiction shall be reversed or altered on appeal on account of any error or defect, either in the charge or in the proceedings on or before trial, unless such error or defect has occasioned a substantial miscarriage of justice, either as affecting the due conduct of the prosecution, or as prejudicing the prisoner in his defence.

In case the accused person has been sentenced to a larger amount of punishment than could have been awarded for the offence which, in the judgment of the Appellate Court, is proved by the evidence, the Appellate Court may reduce the punishment within the limits prescribed by the Indian Penal Code, or any law for the time being in force for such offence.

284. When any Court has convicted a person of an offence not triable by such Court, the Appellate Court shall annul the conviction and sentence of such Court, and direct the trial of the case by a Court of competent jurisdiction.

285. Except as provided in sections two hundred and seventy-two and two hundred and ninety-seven, sentences and orders passed by an Appellate Court upon appeal shall be final.

286. Unless otherwise provided by this Act or by any other law for the time being in force, no appeal shall lie from any order or sentence of a Criminal Court.

CHAPTER XXI.—REFERENCE.

287. If the Court of Session pass sentence of death, the sentence shall not be executed without the confirmation of the High Court.

If the accused person is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall, in its judgment, state the reason why sentence of death was not passed.

288. In any case so referred, whether tried with assessors or by jury, the High Court may either confirm the sentence or pass any other sentence warranted by law, or may annul the conviction and order a new trial on the same or an amended charge or may acquit the accused person.

289. If the Court think further inquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused person to be necessary, it may direct such inquiry to be made, or such additional evidence to be taken.

The result of the further inquiry and the additional evidence shall be certified to the High Court, and the High Court shall thereupon proceed to pass judgment of acquittal, or such sentence as it thinks fit.

290. In every case so referred to the High Court, the confirmation of sentence to be signed by two Judges. sentence or order passed by the High Court, shall be determined and signed by at least two Judges of the Court.

291. When the High Court of reference, revision, or appeal, in any part of the territories to which this Code has been extended as aforesaid, consists of a single Judge, he shall have all the powers conferred upon two or more Judges of the High Court by this chapter.

CHAPTER XXII.—SUPERINTENDENCE AND REVISION.

292. The High Court may make and issue general rules for regulating the practice and proceedings of that Court and of all Criminal Courts subordinate to it,

for keeping all books, entries, and accounts to be kept in such Courts, and

for the preparation and transmission of any calendars or statements to be prepared and submitted by such Courts,

and may also frame forms (when not prescribed by this Act) for every proceeding in the said Courts for which it thinks that a form should be provided, and from time to time may alter any such rule or form:

Provided that such rules and forms be not inconsistent with the provisions of this Act, or of any other law in force.

All rules framed by the Court, all repeals and alterations thereof under this section shall be published in the official Gazette.

293. All Subordinate Courts shall send to the High Court such periodical statements or calendars of trials held by such Courts as the High Court prescribes, exhibiting the offences charged, the offences of which the accused persons are convicted, and the sentences or orders passed upon them.

294. The High Court may call for and examine the record of any case tried by any Subordinate Court for the purpose of satisfying itself as to the legality or propriety of any sentence or order passed, and as to the regularity of the proceedings of such Court.

295. Any Court of Session or Magistrate of the District may, at all times, call for and examine the record of any Court subordinate to such Court or Magistrate, for the purpose of satisfying itself or himself as to the legality of any sentence or order passed, and as to the regularity of the proceedings of such Subordinate Court.

296. If the Court of Session or Magistrate of the District is of opinion that the judgment or order is contrary to law, or that the punishment is too severe or is inadequate, such Court or Magistrate may report the proceedings for the orders of the High Court:

Provided that in committable cases if a Court of Session or Magistrate of the District considers that a complaint has been improperly dismissed or discharged by a Subordinate Court, such Court or Magistrate may direct the accused person to be committed for trial.

297. If in any case either called for by itself, or reported for orders or which comes to its knowledge, it appears to the High Court that there has been a material error in the proceedings of the Court below, it shall pass such order thereon as it thinks fit.

If it considers that a complaint has been improperly dismissed or discharged, it may order the accused person to be committed;

If it considers that the charge has been inconveniently framed, and that the facts of the case show that the prisoner ought to have been convicted of an offence other than that of which he was convicted, it shall pass sentence for the offence of which he ought to have been convicted,

Provided that if the error in the charge appears materially to have misled and prejudiced the accused person in his defence, the High Court shall annul the conviction and remand the case to the Court below with an amended charge, and the Court below shall thereupon proceed as if it had itself amended such charge.

If the High Court considers that any person convicted by a Magistrate has committed an offence not triable by such Magistrate, it may annul the trial and order a new trial before a competent Court.

If it considers that the sentence passed on the accused person is one which cannot legally be passed for the offence of which the accused person has been convicted, or might have been legally convicted upon the facts of the case, it shall annul such sentence and pass a sentence in accordance with law.

If it considers that the sentence passed is too severe, it may pass any lesser sentence warranted by law; if it considers that the sentence is inadequate, it may pass a proper sentence.

The High Court may, whenever it thinks fit, order that the sentence in any case coming before it as a Court of Revision be suspended; that any person imprisoned under such order be released on bail, if the offence for which such person has been imprisoned be bailable.

Except as provided in sections three hundred and twenty-eight and three hundred and ninety-eight, no Court other than the High Court shall alter any sentence or order of any Subordinate Court except upon appeal by the parties concerned.

In exercising its powers of Revision it shall be in the discretion of the High Court to hear any person interested in the matter.

298. The High Court, the Court of Session and the Magistrate of the District may order any subordinate Court to inquire into any complaint which has been dismissed under section one hundred and forty-seven.

299. Whenever a case is revised by the High Court under this chapter, it shall certify its decision or order to the Court in which the conviction was had or by which the order was passed; or if the conviction or order was passed by a Magistrate other than the Magistrate of the District, to the Magistrate of the District.

The Court or Magistrate to which the High Court certifies its order shall thereupon make such orders as are conformable to the decision of the High Court, and, if necessary, the record shall be amended in accordance therewith:

Provided that, in any case revised by the High Court under this chapter, the High Court shall not reverse the verdict of a jury, or alter or reverse the sentence or order of the Court below except as herein provided.

300. The provisions of section two hundred and eighty-three shall apply to revision orders under this chapter.

PART VII. EXECUTION. CHAPTER XXIII.

301. In cases referred by the Court of Session for the confirmation of a sentence by the High Court, the proper officer of the High Court shall without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order under the seal of the High Court, and attested with his official signature, to the Court of Session.

Such Court shall, if the sentence be confirmed, issue a warrant to the officer in charge of the jail in which the prisoner is confined, to cause the sentence or order to be carried into execution;

art VII, C. or, in the case of any other orders, shall cause XXIII, ss. such order to be carried into effect.

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302. In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence to the Magistrate of the District in which the trial was held.

If the accused person is sentenced to imprisonment, the Court shall forthwith forward him, with a warrant for the execution of the sentence, to the officer in charge of the jail of the district in which the trial was held.

The warrant shall state the offence of which the accused person has been convicted and the period during which he is to be imprisoned and the nature of the imprisonment.

In cases tried by any Court inferior to a Court of Session, the Court passing the sentence shall forthwith forward the accused person, with a similar warrant for the execution of the sentence, to the officer in charge of the jail of the district in which the trial was held.

303. Every warrant for the commitment of a person to custody shall be in writing and signed and sealed by the Judge or Magistrate who issues it, and shall be directed to some jailor or other officer or person having authority to receive and keep prisoners, and shall be in the Form (C or D as the case may be) given in the second schedule to this Act or to the like effect.

304. The warrant of commitment shall be lodged with the jailor, if he be in the jail; and if he be not in the jail, with his deputy.

If the jailor has no deputy, the warrant may be lodged with any officer of the jail then being in the jail.

305. Upon the receipt of a warrant under section three hundred and one or three hundred and two, the officer in charge of the jail shall cause the sentence to be executed, and shall return the warrant, when the sentence has been fully executed, to the Court from which it issued, with an endorsement under his signature, certifying the manner in which the sentence has been executed.

306. If a woman sentenced to death be found to be pregnant, the High Court may order the sentence to be postponed, and may commute the sentence.

307. Whenever an offender is sentenced to pay a fine, the Court which sentences him may issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the offender, whether or not the offence be punishable with fine only, and whether or not the sentence direct that, in default of payment of the fine, the offender shall suffer imprisonment.

Such warrant may be executed within the jurisdiction of the Court that issued it, and it shall authorize the distress and sale of any moveable property belonging to the offender without the jurisdiction of the said Court when endorsed by

the Magistrate of the District in which such property is situated.

308. Whenever a Criminal Court imposes a fine, or confirms in appeal or revision a sentence of fine, or a sentence of which fine forms a part, the Court may order the whole or any part of the fine to be paid in compensation,

(1) for expenses properly incurred in the prosecution,

(2) for the offence complained of, where such offence can, in the opinion of the Court, be compensated by money.

Such payment shall be made, as the Court thinks fit, to or for the benefit of the complainant, or the person injured, or both.

If the fine be awarded by a Court whose decision is subject to appeal or revision, the amount awarded shall not be paid until the period prescribed for presentation of the appeal has elapsed, or, if an appeal be presented, till after the decision of the appeal.

In any subsequent civil proceedings relating to the same matter, the Court shall take into account any sum which may have been awarded under this section.

309. In every case punishable under any law in force with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, the Criminal Courts shall be guided by the provisions of sections sixty-four and sixty-five of the Indian Penal Code in awarding the period of imprisonment in default of payment of the fine:

Provided that, in no case decided by a Magistrate, where imprisonment shall have been awarded as part of the substantive sentence, shall the period of imprisonment awarded in default of payment of the fine exceed one-fourth of the period of imprisonment which he is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

Where a person is sentenced to fine only, the Magistrate may award such term of imprisonment in default of payment of fine as is allowed by law, provided the amount does not exceed the Magistrate's powers under this Act.

310. When the punishment of whipping is awarded in addition to imprisonment, by a Court whose sentence is open to revision by a superior Court, the whipping shall not be inflicted until fifteen days from the date of such sentence, or, if an appeal be made within that time, until the sentence is confirmed by the superior Court: but the whipping shall be inflicted immediately on the expiry of the fifteen days, or, in case of an appeal, immediately on the receipt of the order of the Court confirming the sentence if such order is not received within the fifteen days.

311. In the case of an adult, the punishment of whipping shall be inflicted with such instrument in such mode and on such part of the person as the Local Government directs, and in the case of a juvenile offender, it

Art VII, C. shall be inflicted in the way of school discipline with a light rattan.
XXIII, 88.
12—315.

In no case, if the cat-of-nine-tails be the instrument employed, shall the punishment of whipping exceed one hundred and fifty lashes, or, if the rattan be employed, shall the punishment exceed thirty stripes.

The punishment shall be inflicted in the presence of a Magistrate, and also, unless the Court which passed the sentence otherwise orders, in the presence of a Medical Officer.

312. No sentence of whipping shall be carried

Punishment not to be inflicted if offender not in fit state of health.

into execution unless a Medical Officer, if present, certifies, or unless it appears to the Magistrate present, that the offender is in a fit state of health to undergo the punishment.

If during the execution of a sentence of whipping, a Medical Officer certifies, or it appears to the officer present, that the offender is not in a fit state of health to undergo the remainder of the punishment, the whipping shall be finally stopped.

Nor by instalments.

No sentence of whipping shall be executed by instalments.

313. In any case in which, under section

Procedure if punishment cannot be inflicted under the last section.

three hundred and twelve, a sentence of whipping is, wholly or partially, prevented from being carried into execution, the offender shall be kept in custody till the Court which passed the sentence can revise it, and the said Court may, at its discretion, either order his discharge, or sentence him in lieu of whipping or in lieu of so much of the sentence of whipping as was not carried out, to imprisonment for any period, which may be in addition to any other punishment to which he may have been sentenced for the same offence:

Provided that the whole period of imprisonment shall not exceed that to which the offender is liable by law, or that which the said Court is competent to award.

314. When a person is convicted at one trial

Sentence in cases of simultaneous conviction of several offences.

of two or more offences punishable under the same or different sections of the law, the Court may sentence him for the offences of which he has been convicted to the several penalties prescribed by such enactment or enactments which such Court is competent to inflict; such penalties, when consisting of imprisonment or transportation, to commence the one after the expiration of the other.

It shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided that in no case shall the person be

Maximum term of imprisonment.

sentenced to imprisonment for a longer period than fourteen years:

Provided also that, if the case be tried by a Magistrate, the punishment shall not in the aggregate exceed twice the extent of punishment which

he is by his ordinary jurisdiction competent to inflict.

EXPLANATION I.—Where the law provides a specific penalty for a compound offence, the accused person shall not be liable to be tried severally for each offence which forms a part of such compound offence.

Illustrations.

A commits the offence of lurking house-trespass by night and also steals twenty rupees from the house so entered. A is only liable to punishment under the latter clause of section 457 of the Indian Penal Code, and may not be tried for both house-trespass and theft on separate charges.

A commits the offence of rioting. A is punishable under section 147, Indian Penal Code, and may not, on the same facts, be also convicted of being a member of an unlawful assembly.

A commits the offence of rioting and continues in the unlawful assembly after it has been ordered to disperse. A is punishable under sections 147 and 145, Indian Penal Code.

A, with six others, commits the offences of rioting, grievous hurt and of assaulting a public servant engaged in suppressing the riot. A may be tried separately for each of these three offences.

A joins an unlawful assembly armed with a deadly weapon and partakes in a riot by such assembly. A is punishable under section 148, Indian Penal Code, and not under sections 144 and 145, Indian Penal Code.

Z criminally intimidates A, B and C at the same time. A, B and C may each bring separate charges on which Z may be separately punished.

A steals a watch which is subsequently found in his possession. A cannot be convicted of theft and of receiving the watch.

A commits dacoity and removes his share of the plundered property to his house where it is subsequently found. A may be tried for dacoity, but he is not liable to be tried, in addition, for receiving the property plundered by such dacoity.

EXPLANATION II.—If the punishment which may be inflicted on conviction of one of the offences which forms part of a compound offence be greater than that which may be inflicted for the compound offence, the accused person may be tried on separate charges for each offence, provided that the punishment shall not exceed that which might by law be inflicted for the gravest offence of which such accused person is found guilty.

Illustration.

A commits house-breaking by day and commits, in the house so entered, adultery with B's wife. A is liable, under section 454, Indian Penal Code, to three years' imprisonment, and the offence of adultery (section 497, Indian Penal Code) is punishable with five years' imprisonment. A may be tried for house-breaking and adultery; but, on conviction for both offences, the punishment may not exceed that prescribed for adultery.

315. Whoever, having been convicted of an

offence punishable under chapter XII or chapter XVII of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall ordinarily, if the Magistrate consider that the offence appears to have been committed, be committed to the Court of Session:

Trial of previously convicted persons.

Provided that, in districts in which the Magistrate of the District has been invested with powers under section thirty-six, the accused person may be placed on his trial before such Magistrate of the District

Proviso.